COUNCIL OF STATES

Monday, 21st September 1953

The Council met at a quarter past eight of the clock, MR. CHAIRMAN in the Chair.

THE ESTATE DUTY BILL, 1953—*Continued*

MR. CHAIRMAN: Mr. Deshmukh will reply to the debate.

THE MINISTER FOR FINANCE (SHRI C. D. DESHMUKH): Sir, it is needless to say that I am gratified that the general reception given to the Bill is entirely favourable excepting in regard to one Member; and I can understand his point of view although I have no particular sympathy for it. I think that he has failed to read the signs of the times and to respond to them. I also thank the hon. Members for the kind references that they have made to me personally in piloting the Bill. Now there is one general point which I should like to refer to and that is about conjectures made in regard to my possible attitude to amendments. Many hon. Members have assumed that merely because the other House has been adjourned, I shall not be prepared to consider on their merits any amendments that may be suggested. I should like to take the earliest opportunity of saying that that is not so. If, for instance, I am convinced that there are serious omissions which must be rectified, then it would be wrong on my part to present a closed mind to the arguments which hon. Members put forward. After all, let us compute what I am going to lose or what the Government is going to lose. It simply means a delay of perhaps a couple of months in bringing this legislation into force. Now that we have waited for 7 years—from 1946 to 1953—I don't see that proportionately we will lose very much by waiting for another two months and I can assure hon. Members that I shall be prepared to wait if they succeed in convincing me. I say this because I want them to take on its merits what I say. If they start with the assumption that this is only a presentation of formal arguments and that the Finance Minister is determined not to accept any amendments, then I think all this debate will be unreal and I am very anxious, Sir, that no debate should be unreal in this House. I attend very carefully to what hon. Members have to say and I do try to apply my mind to it.

Sir, I was also blamed for not having suggested a Joint Select Committee. In a matter like this, the choice before me is somewhat difficult. At some early stage, on my own I have to come to a conclusion whether a particular measure is a Money Bill or not and I have not got a very large body of Speaker's rulings so far to rely upon. I read the article, which is article 110, I take counsel with the Law Ministry and then we decide whether a particular measure is a Money Bill or not a Money Bill. If I come to the conclusion that it is a Money Bill, then obviously I cannot suggest a Joint Select Committee. That was my difficulty, I think, last November when I introduced this Bill in the House of the People. So far as I can see, there is no constitutional procedure by which I can refer this matter to the Speaker as one may refer something to the Supreme Court when a matter of law or of constitutional importance arises. I cannot go up to him and say, "This is a measure which I wish to bring. Do you think it is a Money Bill or not?"

SHRI J. R. KAPOOR (Uttar Pradesh): One never knows until the Bill has been passed by the House of the People whether it has the shape of a Money Bill or not. Even if a reference was made to the Speaker, he would say, "I don't know what shape this is going to take." Further at the initial stage no Bill is a Money Bill and nobody can declare it so.

SHRI C. D. DESHMUKH: The hon. Member's conclusion is against me, but his argument is for me because

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the form in which I present the Bill is the form which I assume as the final form. I agree that nobody knows whether changes will be made. It is conceivable that the House of the People may reject the Bill entirely.

SHRI C. G. K. REDDY (Mysore): Inconceivable.

SHRI C. D. DESHMUKH: It might be—with certain constitutional consequences. By this Bill it is my intention to impose a tax. According to me the Bill contains only those provisions plus—I am not now arguing against the Speaker's ruling, I am only giving an idea of my state of mind—the only other provisions that I include are procedural, ancillary and subsidiary provisions. I am entitled to consider on the totality of those provisions whether a Bill is a Money Bill or not and I may be right or I may be wrong—as I was shown to be in this case. I have not yet seen the reasons why. In due course may be I shall know, or perhaps I may not know. All I do know is that the Income-tax Amendment Bill which was introduced some time ago was held to be a Money Bill. Now this seems to be similar to that. Anyway I shall not overstress this point. I am only anxious to absolve myself from any charge of *mala fides* in this matter. I am well aware of the desire of this House to have the earliest opportunity of making their contribution to a complicated measure and I can only assure them that if I have any other measure to bring, I shall certainly bear this in mind. Unfortunately most of the measures I bring in are perilously near a Money Bill. So the opportunity that is available to me is less than in the case of other hon. Ministers.

Sir, there was also some charge in Dr. Ambedkar's speech that this Bill was somewhere on the dusty shelves of the Finance Ministry. Now I have evidence to show that it was on his advice that the Bill was postponed. He thought it was best that we should wait—unfortunately he is not here—till the Hindu Code was passed into law. Indeed, Sir, if I may say so, because of the complicated nature of the Bill, the arrangement was that he should be in charge of the Bill. In the time of my predecessor the arrangement was that the Law Minister should be in charge of the Bill and it was only my desire to rush in where lawyers fear to tread that I undertook this responsibility of piloting this measure. Anyway that is a point of no great importance and I don't suppose the House takes seriously this question whether this Bill was resting on the shelves of the Finance Ministry or resting anywhere else or whether the Congress Party have or have not carried out their assurances. I say that I feel a sense of satisfaction that an important piece of legislation is being brought before the House and it appears that almost all sections of the House are in favour of it. Therefore there is no great question of to whom the credit belongs. If there is any credit, it is simply this, that at long last, Government have been able to carry out almost—they have not yet carried them out till they get this Bill through—the assurances that they had given on the floor of either this Parliament or the Provisional Parliament that they would pass an Estate Duty Act.

I shall now come to the other general points made. One was that the Bill does not go far enough. Now, if by this we mean that the provisions of the Bill are not adequate for the purpose which they are intended to serve, then I cannot agree because in essence, we have drawn upon the accumulated experience of the United Kingdom. It may be that there will be a wide room for difference of opinion as to whether the rates proposed, the various extensions and deductions and other limits proposed, are moderate, or err on one side or the other, of moderation. My only reply is certainly not what is made out by hon. Members opposite—any

soft-heartedness. I do not think that a soft-hearted Finance Minister can last very long. In other words, a soft heart and a Finance Minister are inconsistent terms.

SHRI S. N. MAZUMDAR (West Bengal): But if Government's policies are soft towards certain sections of the people, the Finance Minister has got to be soft-hearted towards them.

SHRI C. D. DESHMUKH: The point I wish to make is that one might give any meaning to soft-heartedness; but the point is whether it is not essentially a matter of judgment—of human judgment—that it is in the interest of the country, that mixed economy should be encouraged. Other public people or Members of Parliament or parties may strongly hold the view that it is a broken reed, this private enterprise, or whatever name you give it, or the capitalist economy is a broken reed and that no worthwhile progress can be achieved unless we abandon that reed and take on something else. I say this is essentially a matter of judgment of public affairs. In its essence, it is a matter of the judgment of human nature, that is to say, to what does human nature respond? Does it respond for a long time and at a consistently intensive level to patriotism, emotion, enthusiasm, or does it respond to the baser motives of private profit? And there one may import all kinds of cynicism, scepticism or enthusiasm, idealism and all that into the picture. Now, as I said, Finance Ministers, by nature, are somewhat cynical and sceptical. They have been bitten too often. Therefore one might, even from the opposite ranks, understand the Finance Minister taking a view which favours mixed economy. If all this means soft-heartedness, then I plead guilty to soft-heartedness. But let us not quarrel about words.

In regard to this particular measure, Sir, I do think it is very necessary to find out by actual experience what the thousand and one reactions are going to be, psychological, socio-economic and all kinds of reactions. Looking back on it, perhaps after two generations, one might be inclined to regard this as an epoch-making measure, some new kind of taxation put on the Statute Book of India for the first time. Today we are not inclined to take that view and I do not urge it. I am not much concerned with this business of milestones, landmarks, epoch-making revolutionary and the like. I am not very much concerned with that. I am a severely practical person.

SHRI C. G. K. REDDY: The hon. Minister claimed it for once.

SHRI C. D. DESHMUKH: That is a view that the historian may take. But I think that now that we have fashioned this instrument, one should see how one is able to wield it. Almost all the hon. Members have joined, curiously enough, in condemning the whole of the income-tax administration. They have said, "Here you have an administrative machinery which cannot be relied upon". Now, if they were to be taken at their word, then it would amount to this, that you should not have any tax of this kind at all, because the administration has not made a success of the law which they have to administer today, and why are you now encumbering them with an additional and a far more complex piece of legislation to administer? Sir, I am optimistic in this matter. In the first place I do not definitely share the view that the administration is so bad. It is my belief that it is improving slowly and it is responsive to the new public angle that we are bringing to bear on it. Nevertheless, I am anxious that since opportunities for causing hardship and harassment presented by a piece of legislation like this are so many, that I should have confidence myself in that machinery, before I could call upon that machinery or that instrument to accomplish very big tasks. If I may borrow a metaphor, Sir, it is like a new infant, soon after birth, and somebody saying, "Well, it looks as if he is going to be an important bread-earner" and all

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the other good ladies who crowd round the cradle saying the same thing, "Yes, he has some very good signs", and others saying, "Oh, he is so puny! How can he do anything big? He is only eight ounces or ten ounces—or is it 8 lbs. or 10 lbs.—whatever it is. And look at his limbs. They are so soft and flabby. How do you think that this particular article is going to be a bread-earner?" But I say, give it a little time to grow. It will be very unreasonable to say that what you see before you is not going to achieve anything. And that is what I claim in regard to this Bill.

This, of course, does not hold any threat that immediately I feel settled in my saddle, so to speak—I am sorry, I am mixing up my metaphors—it is my fell intention to raise the rates and make life completely unpleasant for everybody. That is not so. I say that if one takes the view based on experience, one might come to certain conclusions and they may not be conclusions in the same directions. One might say that whereas the exemption limit is too high, the rates are too low, or one may say something else about deductions and exemptions. But all these things can be settled very well after we have had certain experience. That is what I would urge on hon. Members when they criticise this Bill. I do not think it would be right to take up every single item and say, "Look at the house, look at the exemption given, look at the dowry. Why don't you keep on changing?" But I would like them to take a bird's eye view of this measure and to try and see its comprehensive pattern, before any attempt is made to give it some kind of arithmetical precision.

There was some doubt expressed as to the desirability of rushing into this legislation. The word "rushing" sounds odd, and this suggestion came, again, from Dr. Ambedkar. He said that very few of the Southern Asiatic countries have passed any such law. Well, to our knowledge, Ceylon, the Federated Malay States, Hong Kong, Jamaica, Fiji, Pakistan and Thailand have got these duties.

SHRI C. G. K. REDDY: Not Christmas Island?

SHRI C. D. DESHMUKH: May have; but the information has not reached us. Philippines also has this although it is not a South-East Asiatic country—it is a Pacific Ocean country—but this country also has this legislation.

Now, as regards the possible effect on capital formation, some hon. Members quoted Prof. Pigou and so did I at the earliest stage in the House of the People. We agreed with him that, on the whole, "the expectation of death duties would check savings and so contract the national dividend of future years. Since, however, they do not, as a rule, hit savings till some years after they are made, this repressive effect need not be very great. Since persons discount future taxes precisely as they discount all future events and since their concern in any event is largely diminished if the tax is known to fall due when they themselves are no longer alive,"—I am quoting Pigou, Sir—"the expectation of taxes levied after the second method will have smaller restrictive influence upon the quantity of capital created by them". He goes on to say:—if you will permit me to add another quotation, Sir—"It follows that any given transference of resources from the rich to the poor is bound in itself and apart from the reactions discussed previously, to increase the national dividend of the future provided that the return yielded by investment in the poor through additions to their industrial capacity is not less than the return yielded by investment in material capital, that is to say, roughly, than the normal rate of interest."

So, provided this condition is satisfied, that is to say, money is well used—this is not a quotation, Sir, it ended with the words 'normal rate of interest'—then the anxiety for capital formation need not, I suggest, stand in the way of this legislation.

Now, Sir, I referred to the question of administrative set-up What have we actually done to improve it? Many hon Members who agreed with the principle appealed to me to ensure that the administration is made fully capable of responding to this new burden Now, we have been studying the administration of this law in other countries, there has been set up a number of study circles, as a matter of fact, in each Commissioner of Income-tax's organisation, for several months past now Then, Sir, it is our intention to send six hand-picked officers, so to speak, to the United Kingdom to study methods of operating the Act We did not think it worthwhile sending them earlier because we wanted to make sure of the kind of legislation we should have to administer and we are also organising a training class for 45 officers who, we think, would be required for the purposes of administering this Act shortly, that is to say, at the end of next month, in Delhi.

Sir, some hon Members expressed anxiety in regard to the method of recruitment of the officers. Now, that anxiety is easily allayed. All recruitment of officers will be made through the Union Public Service Commission and other recruitment will be made strictly according to orders prescribed by Government Therefore, there can be no question of the matter being left to the discretion of Controllers They are only mentioned in this Bill because they must have powers to take certain disciplinary action, that is to say, whoever appoints them, all Government officers must be subject to instructions or directives which are issued by Government from time to time It does not mean as if a sort of *imperium in imperio* was created by this Bill.

As regards harassment, I am very conscious that if this legislation is badly administered it can cause an immense degree of harassment, and I can only repeat the assurance which I give to the other House that it is my anxiety to establish far better relations between the tax-gatherer and the assessee than seem to exist today judging from the observations made here I am bound to point out, Sir, that, so far as the public is concerned, and so far as one can judge of public sentiment from what appears in the Press, they appear to have welcomed this measure So, if they also co-operate, while we go on improving our machinery, it should be possible to keep hardship and harassment to the minimum It is not possible, Sir, in any country except perhaps in the United Kingdom, in respect of certain taxes, to have taxation without tears. One could have death without tears but not taxation without tears, sometimes

SHRI C G K REDDY Sometimes?

SHRI C D DESHMUKH Yes.

Now, Sir, I have already dealt with this question of corruption in a general way, but I am always ready to consider any concrete cases that hon Members may have to bring to my notice and, indeed, I should be grateful because, as I said, that is part of public relations We have now special Public Relations Officers and hon Members can either approach them or myself or my hon colleagues who are prepared to receive communications in regard to this matter without any limit whatsoever and we promise to look into every case provided sufficient details are given to enable us to trace the man

Certain other hon. Members have complained about the difficulty of the language of the Bill So far as the ordinary person is concerned, the owner of property, such as land, insurance, building, gifts, the language is simple enough and those are the essential points towards which, I think, most of the amendments have been directed. But, when it comes to the question of settlements, trusts and other methods of evasion, it is not altogether possible to avoid complicated

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language. There, as Lord Macmillan said,—I quote, Sir—"the legislation on the subject illustrates the usual competition in ingenuity between the tax-gatherer and the tax-evader, which has rendered the revenue Statutes increasingly complicated". People who form private companies, make settlements, etc., would, in any case, have to take the assistance of lawyers; nobody goes and makes trusts just by himself. If it was such a simple matter then one could make trusts on one's own initiative but then it is in practice found to be impracticable. Now, when a lawyer's assistance is called in, I do not think it would be found that the language is too difficult. One Judge has said—Lord Rowlatt—"in taxation you have to look simply at what is clearly said. There is no room for any intendment;"—that itself is a difficult word, Sir—"there is no equity about a tax; there is no presumption as to a tax; you read nothing in; you imply nothing; but you look fairly at what is said and what is said clearly and that is the tax." Nevertheless I think it is necessary that for the layman for whom this tax will be a reality there should be some guide as to what his responsibilities are and what his burdens are likely to be, and I have already undertaken to publish a manual for the guidance of the layman in as simple a language as is possible. Now this is practicable because that booklet will never be taken to a court of law. Therefore ingenious people will not try to pick it to bits. They will just try and get the intended sense out of it and that is all that is necessary so far as the layman is concerned. After having informed himself of the general layout of the legislation in a particular case he may still have to go to a lawyer to find out what exactly, as I said, his responsibilities or burdens are going to be.

As my colleague reminds me, we have published a pamphlet in regard to income-tax which is, I think, slightly less complicated, so far as the language is concerned. All these measures require a great deal of mental concentration, and that is the same thing that is required in reading a page of Bhatta's *Kadambari*. I remember to have read it in my student days. One page, the whole of it, is one Samas, words put together. You begin at the top and you have not come to the end of it—it is all one word—and yet, because of all the well-known laws which govern the throwing together of words which is called a Samas, it is very easy, as you go along, to make out the meaning of it. I do not suggest that it is as easy as *Kadambari*. (*Interruption.*) Well, that depends on the interest taken. If one is a lawyer I am sure one would find plenty of interest in this legislation, prospective and present.

Now, Sir, the other point made was that this Bill did not reduce inequality. I am glad that certain hon. Members recognise that I made no exaggerated claims in this matter. Whatever the yield and whatever the extent to which inequalities will be reduced in the present democratic set-up with adult suffrage, everyone is aware of his condition and if it is reduced it would put him *au fait* of his responsibilities, and therefore any parade of conspicuous wealth is apt to dishearten the ordinary man and to have psychological reactions. That, I think, will be an important feature of this legislation. So whether we derive a great deal of income from it or not, I think it will secure that that conspicuous parade of wealth will be discouraged and that I think will be a big gain.

As regards this question of yield, so far, Sir, I have not hazarded a guess because adequate data are not available. There are a thousand and one variables in this and any result which is calculated after summing certain fixed quantities for these variables is apt to be almost a wild conjecture. I can only indicate to the hon. Members the lines on which the calculations have been made by some. I have just recently seen a calculation

made by some other persons—not those who are intimately connected with this—those even outside this country One takes the income ranges for the income-tax and super tax One takes the average expectation of life after one reaches a certain income range Then one proceeds to calculate from the income the total value of the property which would stand to be assessed or on which the estate duty would have to be determined in the case of death Then one assumes exemption limits Then one assumes which of the rates are going to apply to them One can only take an average rate and then one can come to some kind of conclusion that on these assumptions the yield is going to be so much To that I must point out has to be added the value of agricultural property in regard to which we have no statistics If it was merely a question of non-agricultural property I might perhaps have ventured to make a guess But in regard to agricultural property I have no statistics at all and therefore an indeterminate addition has to be made to what I calculate proceeding from the income-tax basis Now I do feel that any figure that I might present might be quoted against me as a sort of estoppel and I may either be treated as having collected much less than what I indicated I would collect or I might be reproached for trying to mulct the public by collecting very much more than what I had indicated Therefore, Sir I content myself with saying that I should be very much surprised if the estimates given by other Members are realised A Member of the House of People hazarded an estimate that the yield might be 14 or 15 crores and to that I said that I should be very pleasantly and agreeably surprised if that were to prove to be the case Now from that, Sir, hon Members can draw their own inferences

DR P C MITRA (Bihar) It depends on the death rate of the rich

KHWAJA INAIT ULLAH (Bihar) It means that you do not even expect this

SHRI C D DESHMUKH No use driving me to a corner This is the position as far as, I think, it is safe for me to go consistently with my responsibilities

Therefore it really means that the outside limit under the present provision is about Rs 14 or 15 crores But whether even that will be realised would depend on the action which hundreds and thousands of prospective assessees will take—not assessees because they will be dead, but the owners of properties and estates

There is another way of doing things and that exercise hon Members can indulge in They can take the figures of yield of income-tax and super tax in certain countries and the yield of this estate duty or death duty They can try some kind of proportion They can calculate the proportion, the ratio of one to the other They may come to certain conclusions They would see that the average relation is

DR SHRIMATI SEETA PARMANAND (Madhya Pradesh) This is a poor country

SHRI C D DESHMUKH All that is said is that even after drawing such an inference one would have to make an allowance that is to say, if one says that the death duty is 1/X of the total income-tax collections, then one would also have Y for just allowing for the poverty of this country and the ingenuity of the rich and one would have to say that 1/X minus Y of the income-tax will be the yield of the estate duty Now hon Members would work out in their own minds what X and Y are Sir, I think that is all that can profitably be said

There is one matter to which perhaps I should allude here although I do not like to refer too much to the speech of one hon Member because it is not my purpose to criticise that speech Sir, incidentally he quoted certain figures of tax realisation in the U K and that is a matter which is

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relevant here. He said that the total collection of income-tax and super tax in 1951-52 in the U. K. was 20 million pounds and he gave another figure of 180 million as the collection of estate duty. There is something obviously wrong in the figures which somebody furnished to him. Actually the collection of income-tax and super tax in the United Kingdom in 1951-52 was not 20 million pounds but 1,700 million pounds. I thought the discrepancy was large enough for me to draw attention to it. But as I say, apart from these figures, hon. Members can take out the correct figures and try to establish some kind of relation between collections of income-tax and super tax in other countries and the death duties. Then they can probably come within the range, so to speak, of the possible yield of this tax.

Now, Sir, the other point made out was that all Part A and Part B States should be brought within the scope of the Bill. This was with reference to the First Schedule. Among the Part A States, as hon. Members know, we added a couple of them in the House of the People and the list is now Bombay, Madhya Pradesh—but some hon. Member wanted Orissa to be placed first; he said he was glad to place Orissa first—but 'B' comes before 'O' alphabetically and I am sorry I must deprive Orissa of that distinction. So far as Part A States are concerned, it is Bombay, Madhya Pradesh, Orissa, Punjab and Uttar Pradesh and the Part B States are Hyderabad, Madhya Bharat, Rajasthan and Saurashtra. In regard to the others, the position is this. West Bengal: They have stated that they would undertake the necessary legislation themselves as they wish to have control over the rates and to be able to adjust the rates according to their own budgetary position. They also think that they have all the information readily available and are likely to administer the duty more efficiently. Well, Sir, I am not disposed to quarrel with them over this matter. In any case the point is that a tax of this kind is going to be imposed in West Bengal. Madras: They have agreed in principle, but will pass the necessary resolution after the formation of the Andhra State. This was in regard to the undivided Madras and presumably this applies now to the residuary State. What attitude the Andhra State will take, nobody can say. But I can understand this also, that is to say, the States wishing to know what sort of measure it is. Instead of giving a *carte blanche* to the Centre or the Central Legislature, they may wish to see what kind of legislation emerges and then they might make up their mind. They have only got to pass a resolution and then the Act as it is passed by us becomes applicable to them. Similarly, Assam. They promised to take steps to pass the resolution early, as soon as our Act is passed or comes into force. Bihar propose to pass the resolution also in the same way. Now, as regards Part B States, Mysore have advanced from the original position when they had not sent any reply. They have now informed us that they were having the matter under consideration and maybe, hon. Members can do something to promote the speed of that consideration.

SHRI C. G. K. REDDY: I wish the hon. Minister would address the benches behind him.

SHRI C. D. DESHMUKH: Then there is Travancore-Cochin. They have declined to authorise the Centre because they do not consider uniformity to be desirable or necessary and want to retain this power with the State on the ground that there will not be any evasion. Therefore we are left with only two States—one West Bengal and the other Travancore-Cochin.

KHWAJA INAIT ULLAH: One is Communist, one is Terrorist.

SHRI S. N. MAZUMDAR: The Congress Government is there.

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SHRI C. D. DESHMUKH: I do not associate myself with this labelling process. The inclusion of the States, it is hardly necessary for me to remind the House, is only for the purposes of duty on agricultural land. All other property in those States, of course, will be dutiable under our Bill. Now, under article 252 of the Constitution it is entirely within the discretion of the State Legislature whether or not to vest the power in the Central Government and it is not possible for the Central Government to exercise any pressure, nor do I consider, for the reasons that I have given that it is very necessary. Apparently these two States have the intention to levy some kind of estate duty on agricultural land.

SHRI K. P. MADHAVAN NAIR (Travancore-Cochin): Even now there is agricultural income-tax in Travancore-Cochin.

SHRI C. D. DESHMUKH: It means that the transition from that to the estate duty would not be difficult for them. They must be having all the details and statistics. Also, Sir, supposing our Act works better and we are able to administer our piece of legislation efficiently, maybe that they can later on repeal their own Acts and adopt our Act, and I am content to leave the matter there.

Then there was some reference to the method of utilising the possible yield from this tax. Several suggestions were made regarding the method of utilising the proceeds, including the first by the hon. Shri Ghose that it should be set aside for repayment of Central loans; second, that it should be used for development schemes only; third, that it should be set aside or earmarked for social security measures; and last—in a powerful plea, in an eloquent plea—that it should be used for the development of art, music and literature.

DR. SHRIMATI SEETA PARMANAND: I said compulsory education.

SHRI C. D. DESHMUKH: Another worthy object—compulsory education. The total estimate for compulsory education is somewhere near Rs. 400 crores.....

DR. SHRIMATI SEETA PARMANAND: A drop in the ocean.

SHRI C. D. DESHMUKH: ..whereas I had given the figure of yield. Anyway, I am going to make a general point; I am not going to deal with the merits of each suggestion except the one that was made by the hon. Shri Ghose. I do not consider it will be appropriate, even if it were possible constitutionally, for the Centre to give with one hand and take away by the other. I think the hon. Member has over-estimated my cupidity, although I am quite touched by his faith. Now, Sir, under the Constitution the net receipts are to be distributed to the States in the manner described by Parliament. It seems to me—although we have not got the distribution piece of legislation before us—that it will not be permissible and I am only hazarding an opinion that that point may have to be debated. It seems to me that it will not be open to Parliament to enact the exact manner in which the yield should be utilised. All that the Constitution entitles us to do is to pass this legislation, to set up the machinery for collection and place before Parliament a legislation suggesting the process, or mode of distribution of the total proceeds. Therefore, Sir, although the States are bound to take notice of any valuable observations that are made by hon. Members here, since their needs are so multifarious and since they are so pressed for funds for their development schemes, if one were to make a guess one would think that they would use it for some development purpose. Now whether that development will be something that is connected with agriculture or with education or with industrialisation will depend on a variety of factors. It may be that one State may choose one; another State may choose another. There is also this

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possibility that the Planning Commission might be able to indicate to the States how exactly these proceeds should be deployed and I think that is where one ought to leave this matter

Then, Sir, I will come to this question of details of administration The first question asked about this is, how is the Controller to know about deaths and properties left?

That difficulty, Sir, as to whether it is property or whether it is income, is experienced everyday How do we know that sales take place for the purpose of sales tax; how do we know that income arises or the exemption limit has been exceeded, in regard to income-tax? Therefore, we shall have to deal with this difficulty as we go along. Death, Sir, and property, like murder, will be 'out' some time or other If we were to argue in a spirit of excessive caution that we ought to maintain registers of all properties throughout India, and registers of wills, then, I think, we shall cumber ourselves with too many administrative responsibilities in the initial stages After all, Sir, it is not as if all these things stand fixed and fossilized for ever Property keeps changing hands and it will be very difficult to keep pace with the mutations that take place in ownership Therefore, on practical grounds, I do not think it would be possible to adopt the suggestion made We have to rely on certain implicit sanctions, those sanctions arise out of the working of the Act There is clause 74—"Estate duty a first charge on property liable there". Here, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property Similarly, "a rateable part of the estate duty on an estate, in proportion of the value of any benencial interest in possession in movable property shall be a first charge on such interest". It seems to me that taking the generality of people, this is likely to raise some doubt in the minds of people as to whether death has occurred or whether death duty has been paid In other words, people who are concerned with transactions with regard to property will be put on their own inquiry, and therefore the burden of dealing with these matters will be, in a sense, decentralised, instead of a vast administrative machinery trying to cope with an impossible task Every single person in his own interests may be trusted to make his own investigation in order to make sure, as far as he can, that somehow he is not called upon to pay a charge in satisfaction of the claims of Government Indeed the danger sometimes arises by arguing the other way These intricate sanctions will make all transactions in property difficult That is arguing in the opposite direction I think the mean will be somewhere in between, that is to say, people who are concerned with transactions with property have a judgment, that judgment we import in the conduct of our daily affairs For instance, when we say the large majority of middle classes will be left out, then we base our judgment on individual cases Therefore, in a transaction, the buyer may say, "X, Y, Z is known to me, and that he has nothing like a lakh or a lakh and a half, and that it is safe to purchase some property from him". That is in the marginal case, and is acceptable Clause 57 provides that wherever the grant of representation is applied for, an affidavit of valuation should be filed with the Controller and an estate duty clearance certificate obtained Clause 81 provides for exchange of information with State Governments This should enable us to get more information

There is a recent amendment to the Income-tax Act, section 22 which empowers the income-tax officers to call for statements of assets and liabilities. It is not the intention to call for it from every single person in the country, it is not possible It will also be called from what we regard as the marginal classes We should glean from every source before we resort

to the specific administrative machinery Municipalities and Improvement Trusts—here the rental values of property will be recorded, and with the gradual improvement in the technique of administration that might be expected, I do not think one need be over-anxious about this particular difficulty

There was a suggestion in regard to the valuation, that property should be valued as a certain multiple of the annual yield or of the rent fixed for purposes of municipal valuation This does not appear to be practical although in individual cases where there is no other means of determining the value, we may have recourse to this and use this as a basis But in the generality of cases, it will not be practicable, because municipal valuations are not made at the time of death, they are made only periodically This sort of valuing on a set pattern may be once in 10 or 15 years, and there is a revision every time There is an element of artificiality in the fixing of rental value of municipal property The exact multiple will differ from place to place Some municipalities are very efficient and some are not and it is difficult even to issue administrative instructions with regard to the multiple to be employed

It was urged, Sir, that auction should be used as a means of testing value It is not also desirable Unless people are certain that the property is going to be sold at the price at which it is bid in auction, the prices will be unreal

Certain hon Members expressed doubts as to the method of valuation Clause 36(1) clearly states that it is the price which a property would fetch if sold in the open market at the time of the deceased's death Therefore, it is not a theoretical figure but it is a figure which will depend on the actual price prevailing at the particular place and at the particular time. And, so far as logic is concerned, it is not possible to take into account any other figure One could not take into account the difficulties urged that at that time there might be a slump or a boom, whatever it is What we lose on the swings we may gain on the roundabouts

We come then to the question of more immediate importance which has exercised, and demanded a lot of attention from Members, and that is the fixation of limits with regard to property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Dayabhaga or other laws I am loath to reopen these issues of so-called 'discrimination' As I have already explained, it is a question of discretion in the mode of application of the Act in an honest attempt to ensure that the final result will be more or less comparable and equitable. Discrimination imports ideas of conscious differentiation for some ulterior purpose Now that is not so here. It is not the desire to give an undue advantage to one section or to give an undue disadvantage to another section

SHRI H N KUNZRU (Uttar Pradesh) But is differentiation a matter of motive altogether?

SHRI C D DESHMUKH: Discrimination is a matter of motive, but differentiation is certainly not Differentiation is, as I said, an exercise, for a certain end, of judgment, the object of which is removal of discrimination Now, Sir, the bulk of the assessees, as I have pointed out before in the other House, will be those not having a coparcenary interest in a Hindu undivided family's property And according to the statistics that we have, the latter will form a smaller proportion of the total assessees. We know also, Sir, that the number of ..

SHRI RAJAGOPAL NAIDU (Madras) Sir, may I know, when the whole of India, excepting probably Bengal and Assam which are governed by Dayabhaga law, is governed by Mitakshara law, how is it that the number of assessees under the Mitakshara system is less?

SHRI C. D. DESHMUKH: We are concerned with assessees over a certain level of income and property, *i.e.* to say, largely the income-tax payers, and among them there is already some response to the incentives that are given for partition, because under the income-tax law, the complaint is that the present arrangement weighs heavily on the Hindu undivided family, and there is no Budget Session that passes without a fervent appeal being made for abolishing this distinction. Now we feel that the income-tax law weighs heavily on the Hindu undivided family and advantage therefore is freely taken of the provisions made for this particular assessment where there is partition. And therefore it has also been said that only a deed of partition is to be produced. There are rulings given by the income-tax officers. They will not go behind this partition in order to see whether in reality there is a partition or not. So long as the form of partition is complete, we proceed to tax as if there was no joint Hindu family. That is one. Secondly, Sir, there are various modifications of the practice of Hindu law and even the same assessee or the same property may consist partly of Hindu undivided family property and partly of separate property. And I can only quote the obviously limited figures because, I must repeat the point that my figures relate only to income-tax. My figures do not relate to agricultural income-tax. And therefore, I do not know how those figures will be affected. I am prepared to concede that this very low fraction which appears now from the income-tax figures as being governed by the Hindu undivided family rules will probably be raised by the addition of agricultural property. That is to say, I should imagine that the joint Hindu family as a system is less likely to have been affected, in regard to agricultural property, by the general taxation system of the country, than any property which yields non-agricultural income. Even so, I do think that in the totality of the taxable field the properties which are governed by Hindu undivided family regulations will be in a minority. Therefore, we have to consider this as applying to the majority, whether it is Dayabhaga or whether it is Christian or whether it is Parsi. The term therefore that would be used would be 'Mitakshara' and 'Non-Mitakshara' except that in Mitakshara one must include Marumakkattayam and Aliyasantana. Therefore, I shall not give the figures of the income-tax return, because those I think will give a somewhat distorted picture. That is to say, here the number is 75,000 out of the total assessees of five and a half lakhs. (*Interruption.*) Now, therefore, I would regard this exemption limit as a sort of common exemption limit and not a limit raised only for one particular section—this limit of rupees one lakh—and there is a special treatment in respect of coparcenary interest of a person belonging to a Hindu undivided family. Now, Sir, after all it is not as if we are starting with a clean slate. Such differentiation between Hindu undivided family income and other income has existed for a long time in the Income-tax Act, and it has not raised any constitutional issue, although, as I said, it has raised in plenty issues of inequitable treatment. And that matter has been taken notice of by the Income-tax Investigation Commission itself. Now, Sir, it seems to me that various hypothetical cases can be worked out to prove either one proposition or the other. The Hindu undivided family is a very unique institution, and I can say that no matter how ingenious a person may be, it would be quite impossible to have rates and exemption limits, which one could swear with one's hand on one's heart, would be completely fair and equitable and would make no differentiation whatsoever. Over a long period it may be that the Hindu undivided family may have to pay more than other kinds of families. In the ordinary family where partitions continuously take place.....

PRINCIPAL DEVAPRASAD GHOSH (West Bengal): You might have look-

ed upon all private property as coparcenary property for the purpose of the application of this Act—all private properties of Dayabhaga school and other schools.

SHRI C. D. DESHMUKH: Now, Sir, one can develop this argument, as I said, and show how often that duty will have to be paid. In other words, it is a question of frequency on the one hand and the size of the family on the other. The ordinary case put is "Look at the Hindu undivided family or the Mitakshara family. Every time death takes place, something will have to be paid". Then the retort to that is "Yes, but it will have to be a property of Rs. 5 lakhs or Rs. 6 lakhs". Therefore I am suggesting, Sir, that we ought to proceed with it at least on an experimental basis, on what we have now suggested, and when we get a little more experience, I should have plenty of statistics to prove on which section this is weighing heavily. Now my proposition is that if we accept this limit of Rs. 1 lakh, let us regard it as a general limit. When we administer this limit of Rs. 50,000, it may be found that it is either weighing too lightly on Mitakshara property or it is weighing too heavily, and then one might bring in proposals either to raise the limit or to lower the limit of Rs. 50,000. That is to say, that will be the first limit that we shall be concerned with rather than the other limit. That other limit will be raised only on general considerations such as those we dealt with in the beginning as to whether too many poor families are affected or are at a serious disadvantage and so on and so forth.

Now, coming to this question of gifts and to the question of the time limit for gifts, it is recognised in all countries that gifts shortly before death are a definite means of evading duty. This raises the general human right to make a gift whenever one feels inclined to do so, but in actual experience which extends to 43 countries, it is proved definitely that gifts made before death are a means of evasion, and therefore it is provided that such gifts by way of transfer, delivery, declaration or trust, settlement or otherwise, should be immediate and be in the possession of the donee to the entire exclusion of the donor. To prove that there has been such immediate possession by the donee and entire exclusion of the donor, a certain amount of time must elapse before *bona fides* can be established. Some one must have seen the donee exercising ownership over the property. Otherwise, no one knows to whom the property belongs.

DR. W. S. BARLINGAY (Madhya Pradesh): In clause 9, the wording is "two years or more". What is the meaning of the words "or more"?

SHRI C. D. DESHMUKH: Three years, four years or six years.

DR. W. S. BARLINGAY: It may mean any period.

SHRI C. D. DESHMUKH: If it is merely a drafting point, we shall come to it later. But what is meant is clear. Whether the words "or more" are required is another matter. In another place, there are the words "or less", in another place "beginning with two years", but I dare say these are matters of drafting. But the intention is two years or any longer period, two years and five seconds, two years and ten seconds and so on.

SHRI A. S. KHAN (Uttar Pradesh): Death should be by natural causes and not by an accident or violence committed by somebody else.

SHRI C. D. DESHMUKH: This point was not raised in the debate. We shall come to this point when we come to clause 9. At the moment I am only trying to deal with the points which have been raised in the course of the debate. I think that there can never be any mathematical reasoning in regard to which period is appropriate. In the United Kingdom they started

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with one year and they went on to five years to cope with evasion. It was suggested that we should also start with five years. I am by instinct a moderate man. I thought that two years would perhaps be good enough to start with. Now, which way we shall proceed I do not know, whether we shall go back to one year as in the United Kingdom or we shall extend it. That is in the lap of the gods

KHWAJA INAIT ULLAH: Not even a minute this way or that

SHRI C. D. DESHMUKH: At the time of death particularly, it is well-known that it is not possible for the person concerned to express his wishes correctly or precisely. It often happens that somebody puts a pen in somebody else's hand and takes his signature. This sort of thing is done, and nobody can predict the time of his death. fortunately

SHRI C. G. K. REDDY: Fortunately?

SHRI C. D. DESHMUKH: Yes, fortunately. I think life would be quite impossible if one knew when one would cast off his mortal coil. As I said, there is no reason why gifts should be postponed till the last minute. Hon. Members who ask that the period should be extended, want to have things both ways. They want that the person must continue to exercise control over his property, must continue to entertain doubts on the competence of his successors, must continue to be dubious about the integrity of trustees and must continue to entertain hopes that that property can be added by his own efforts and yet he must be able to gift his property to somebody else at the last minute. It has been asked what conditions should further be satisfied in addition to those mentioned in the clause to make a gift *bona fide*. This is answered in Attorney General v. Richmond (1907). This is on page 84 of Hanson's book, which says:—

"A *bona fide* transaction is a real and genuine transaction intended to have full and real operation without any secret arrangement or reservation."

In other words, a deed of gift will not by itself make a gift *bona fide;* it must be actually operated and there must be no secret arrangement or reservation. These are matters of fact to be established. That is to say, the mere production of a document, as in the case of a partition will not make the thing a gift. Whether in a particular set of circumstances it amounts to a gift is a question of law. It is not a question of fact. It may have to be determined some time. I think this is necessary; that is to say, the making of the gift must be proved. The *bona fide* has to be proved by certain sets of circumstances

SHRI RAJAGOPAL NAIDU: It is a question of fact rather than a question of law.

SHRI C. D. DESHMUKH: The hon. Member will find that, when matters go to a court of law, things are different.

SHRI RAJAGOPAL NAIDU: There is absolutely no law about it. The intention of the donor is the criterion.

SHRI C. D. DESHMUKH: We will have an opportunity to discuss these things when we come to clause 9. I may have a little more ammunition then. The four conditions which must be satisfied for gifts to be excluded from estate duty are:

(a) the donee must take immediate possession;

(b) the donor must be excluded from possession;

(c) the donor must not retain any benefit either by contract or otherwise; and

(d) there must be no secret arrangement or reservation to the benefit of the donor. that is, they must be *bona fide*.

These conditions have been extracted from rulings in other countries where the law is in operation. Now, Sir, certain hon. Members have referred to the absence of any time limit in certain States like the U. S. A., Australia or Japan. The fact that they have overlooked is that in these countries there are taxes on gifts which are imposed even when made within the time limit allowed in our Bill. I have no doubt, Sir, that in the course of our future development a future Finance Minister may have to think seriously of some such way of dealing with evasion.

KHWAJA INAIT ULLAH: I think you will do it.

SHRI C. D. DESHMUKH: The suggestion that instead of taking to the full gifts within the statutory period, the duty charged on such gifts should be only 75 per cent. is a refinement which we might consider some time later. I myself think that we should have more experience of this Act and satisfy ourselves that the provisions are really having a deterrent and undesirable effect before we think of any measures of tempering this particular provision. Then there was the suggestion that payment should be accepted in kind. Administratively it will be impossible for Government to hold and administer various kinds of property. The Government will be reduced to a sort of junk-house of unsaleable things.

DR. P. C. MITRA: The Government have taken all the *zamindaris* now. So that will be another *zamindari*.

SHRI C. D. DESHMUKH: As far as I can follow the hon. Member, he suggests the addition of *zamindaris* to this junk house. Now these suggestions proceed on the assumption that the valuations made by the Controller will not be fair. It is in a sense a wager with the administrative machinery. You say 'If you are right, all right, take this'. I don't think it is appropriate for any Government to accept such wager. We make the best effort that we can, we set up the best machinery that we can for determining valuation and then one must proceed on the assumption that the valuation is final for the purposes of determining the estate duty. It is true that in the United Kingdom there is a law permitting taking over by Government of immovable property at the value determined but this is only done when buildings are required for national purposes and there were only three such cases in 1952. That is quite different from the suggestion that has been made. I have not been able to study all the amendments but there may be amendments which say that power should be left to the Controller or Government. I say that if there is discretion, if one does want property for a particular purpose and that could be the only valid objection, then it would be possible by negotiation to acquire such property for national purposes.

Then there was the question of an Appellate Tribunal instead of the Board to hear appeals. The first point that I wish to make is that the Estate Duty Act is a very complicated piece of legislation and generally in other countries all assessments are made by the Board and not by any subordinate authority. That was the scheme proposed also in the original Bill of 1946. But we realize that centralisation of all assessments in the Board would cause great hardship and inconvenience. Therefore, we thought of this expedient of authorising subordinate officers to make the original assessments or determination—I think determination is the proper word. In the initial stages the subordinate authorities require constant guidance and direction and errors of omission or commission for or against assessees will have to be corrected. It is likely to lead to lack of uniformity if, from the very first stage, appeals go to outside authorities who might give different interpretations. Here I repeat that the questions of fact and law, as every lawyer knows, are so inter-mixed that it is very difficult to be dogmatic that a particular matter is a matter of fact

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only. The socalled appeal to the Board is really not an appeal in the technical sense of the word but merely an administrative review. The final appeal lies not to one authority but to two authorities. One is on the question of valuation, it lies to the valuers in accordance with the machinery with which we shall deal in detail when we come to the relevant clauses, and in the other case to the High Court or Supreme Court in matters of law. We have also some reason for claiming that the assessees themselves have not that lack of confidence in administrative authorities that has been expressed by certain hon. Members. In the Income-tax Department appeals to tribunals have gone down from 8,679 in 1950-51 to 8,298 in 1952-53, a decrease of about 8 per cent. While appeals for administrative review by Commissioners have increased from 3,325 to 4,714, an increase of about 40 per cent. It is true that the practice in other countries is not precisely identical with the one that we are proposing. In the U. K. the assessment is made by the Board itself. Therefore there is no question of any intermediate appellate authority. In U. S. A. the assessments are made by the Revenue Agent. Appeals are in two stages—pre-assessment and post-assessment. Pre-assessment appeals lie to the District Agent and to the technical staff in the Board's office. It is only after the Board has passed orders that the cases can be taken to the Tax Courts. In Australia assessments are made by a subordinate authority, first objection is raised before the Commissioner of Estate Duty and thereafter, before outside authorities. In Ceylon the procedure is practically the same as in the U. K.

There is a suggestion that appeals should be allowed to district courts. We feel that the district courts are unlikely to be familiar with the highly technical matters which are bound to arise out of this piece of legislation. Then I have already pointed out the dangers of conflicting decisions.

Lastly the amounts involved being large and that is the sort of case that will go to a court, the bulk of the cases would in any event go in further appeals to High Courts which are certainly not suffering from light work.

Then there are other matters like quick succession relief and so on, that have been urged. We shall have occasion to deal with them later and perhaps it is not necessary for me to deal with the matter here. The question of exemption of residential house was raised by many hon. Members. In many cases the demand was for exemption of small residential house. I believe that the majority of Members of this House irrespective of party affiliations will hold that to exempt all residential houses as such would be undesirable.....

PRINCIPAL DEVAPRASAD GHOSH: At least one residential house.

SHRI C. D. DESHMUKH: Obviously the hon. Member is not likely to belong to that reasonable majority. What I am saying is that the request made was that a small residential house, the value of which should not exceed the sum of Rs. 25,000, should be excluded. Now what has been done actually, as I pointed out, is that the exemption limit itself has been raised from Rs. 75,000 to Rs. 1 lakh. That includes not only a small house but many other things. They include bank balances, may include securities.....

KHWAJA INAIT ULLAH: A motor car also.

SHRI C. D. DESHMUKH: Yes, a very nice motor car—a Cadillac—also if anyone wishes to exempt it. Therefore it seems that we have more than met that by this original liberalisation which is not, I may point out, approved of by all hon. Members. I think Sir, that the exemption limit of Rs. 1 lakh plus various specific exemptions and deductions are liberal enough in the present circumstances

PANDIT S. S. N. TANKHA (Uttar Pradesh): But what about the case of

those governed by Mitakshara who own a house? In their case the value of the deceased's share for exemption from taxation is only Rs. 50,000, which includes the value of his share in the house.

SHRI C. D. DESHMUKH: Nothing would be divided. The value of the house would be taken into consideration so far as Mitakshara families are concerned. There is a notional partition on the strength of which the estate duty is determined. This argument that if the estate duty cannot be paid, then something will happen and everybody—the widow, the children—is likely to be turned out of the house, is I submit, a fallacious argument. In the first place I say in the case of the ordinary house this question should not arise. If it does arise in the case of a house which forms part of a property worth Rs. 1 lakh or Rs. 1½ lakhs, the duty payable will be about Rs. 2,500 which, payable over 8 years, works out to about Rs. 300 per year. That comes to about Rs. 20 or Rs. 25 per month and certainly no one will allow matters to come to this stage that the whole house has to be auctioned in default of the payment of a monthly instalment of Rs. 20 to Rs. 25. I cannot conceive of such a situation. Therefore, as I have said this observation is reinforced by the argument and the illustration in itself is not valid

Sir, I have dealt with most of the points and I have taken more than an hour and a half. I shall have other occasions to deal with many of the details and so I commend my motion to the House.

DR. SHRIMATI SEETA PARMANAND: I would like a clarification, Sir, what is this pre-assessment appeal in the United States of America, that the Finance Minister referred to? How is there an appeal before an assessment?

SHRI C. D. DESHMUKH: Even before the final orders are passed, when the case is put up to the official machinery, an assessment is made.

DR. SHRIMATI SEETA PARMANAND: What assessment is that?

SHRI C. D. DESHMUKH: That is before the assessment is finally made.

MR. CHAIRMAN: The question is:

"That the Bill to provide for the levy and collection of an estate duty, as passed by the House of the People, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: Now we come to the clause by clause consideration of the Bill

The motion is:

"That clause 2 do stand part of the Bill."

Mr. Gupte has got an amendment to this clause. He can now move it.

SHRI B. M. GUPTE (Bombay): Sir, I beg to move:

"That at page 2, in lines 25-28, the words beginning with 'the proceeds of sale thereof' and ending 'by any method' be deleted."

Sir, the definition of property is very important in this Bill, because on the principal value of the property the estate duty is to be imposed. Naturally, therefore, this clause attracted my special attention and when I read it I found we could very well have stopped with saying: " 'property' includes any interest in property, movable or immovable." I could not understand the significance of the latter words which I have indicated in my amendment to be deleted. In my opinion, the matter is sufficiently covered by the words "property movable or immovable" and I do not know why special stress or emphasis has been sought to be laid on the sale proceeds thereof. Actually it may be the proceeds of sales or arrears of salary or any professional fees or things of that sort. I do not see why any specific mention or emphasis should have been laid on the sale

[Shri B. M. Gupte.]

proceeds. I am not going to be dogmatic about it, because the provisions, we are told, are modelled on the English Act and that country has accumulated experience of this sort of measure for many years and therefore, there must have been good reasons for wording the clause as it is; but I would like to know the reasons. The amendment that I have moved is more for the purpose of getting light than for effecting a modification in the clause. Therefore, I shall be obliged if the hon. Finance Minister would give us an illustration of the mischief that he seeks to avoid by this extended definition and the additional ground that is intended to be covered by it. If there is no such special advantage, then I suggest, these words should be deleted as I have requested in my amendment, for loose and involved drafting leads to litigation and different interpretations by the courts, different from what the Legislature actually meant. Courts always take it for granted that even the addition of a coma or a single word in a legislation is made deliberately, and if that is not the fact, then certainly their interpretations will be different. So I would be obliged if the hon. Finance Minister would clear this point.

SHRI RAJAGOPAL NAIDU: Can the clause also be discussed now?

MR. CHAIRMAN: Yes, the clause and the amendment can be discussed.

SHRI RAJAGOPAL NAIDU: Sir, I am not speaking or commenting on the amendment; but I would like to say a few words with regard to sub-clause (17) of clause 2. This sub-clause deals with public charitable purposes. These words "public charitable purpose" as defined is to include "relief of the poor, education, medical relief and the advancement of any other object of general public utility within the territory of India". Sir, I find that this definition is the same as that in the Charitable Endowments Act, and my grievance is that this definition excludes purposes which relate to religious teaching or worship. Sir, gifts are made to temples, churches and mosques and if such gifts are excluded from the purview of public charitable purposes, it would mean that after some time, these temples, mosques and churches and other religious places of worship which are not supported by any kind of help from the State, would ultimately be impoverished because no person would be inclined to contribute anything or donate anything to these temples, churches or mosques. I feel, therefore, that the words "public charitable purpose" should include also contributions for religious teachings and worship. Of course, I find that you have also got the words "any other object of general public utility" in this definition. But these words "of general public utility" I find, carry the same meaning as is given to them in the Income-tax Act, and even that does not include gifts for religious teaching or worship, because I find that the words "general public utility" are defined in the Income-tax Act so as to include the construction of schools, hospitals, *Dharmasalas* etc. and the point is whether it benefits the entire community or only a particular section of the community. If the benefit is for the entire community, then I find in the Income-tax Act that it comes under general public utility; but if it is only for a section of the community it does not come under general public utility. So my grievance is that these public charitable purposes should include or comprise donations or contributions made to religious teaching or worship.

Sir, our country is well-known for making contributions to temples, churches and mosques and such other places of religious teaching and worship and I feel that the examples of other countries should not be quoted when we are dealing with an enactment of this kind which is for the first time being introduced in our country. So I earnestly appeal to the hon. Finance Minister to include contributions for religious teachings and worship in the definition of the words "public charitable purpose".

THE DEPUTY MINISTER FOR FINANCE (SHRI M. C. SHAH): With regard to the amendment of my non-friend Mr. Gupte, I may say that this point was discussed in the Select Committee and as we wanted to make the definition a very comprehensive one, the present definition has been suggested. There may be certain properties which might have been sold and the proceeds of the sale might have been obtained and that might be excluded.

SHRI B. M. GUPTE: Anyway, that is movable property.

SHRI M. C. SHAH: We did not want that to be excluded. Therefore, in order not to have any ambiguity, this definition was made very comprehensive. That is the reason why we have included these words and it is no use dropping them now. If we drop these words, there is a possibility of some ambiguity being created and some property being left out. Therefore, we cannot accept this amendment.

KHWAJA INAIT ULLAH: Sir, what is the meaning of charitable purposes? Will the hon. Minister explain?

SHRI C. D. DESHMUKH: He is still on the first point.

SHRI M. C. SHAH: I am talking about the first point. This definition is based on the United Kingdom model from which we have copied. We cannot accept this amendment.

With regard to public utility charitable purposes, as a matter of fact, there was a proposal to exclude donations to religious teaching institutions or places of worship. Later on, it was found not necessary to include them in the definitions.

In the Public Charitable Endowments Act of 1800 and 1904 the British Government had purposely included them. We have not put in those words but if religious teaching is a public utility charitable purpose, it will be included.

SHRI RAJAGOPAL NAIDU: No.

SHRI M. C. SHAH: It was discussed threadbare and it was explained that donations for religious teaching institutions will come under public charitable acts.

SHRI B. B. SHARMA (Uttar Pradesh): Not if the words are not expressly mentioned.

SHRI M. C. SHAH: We cannot have all these things in the definitions. If they are donations of which advantage is taken by sections of the community then that will be general public utility.

KHWAJA INAIT ULLAH: That can come in the explanations, if you cannot put them in the Act; otherwise it will be very peculiar.

SHRI M. C. SHAH: If we propose to have these explanations and illustrations, it will be a very difficult task. We have decided not to have explanations and illustrations of the things in the scheme of this Act, and, therefore, we have not thought it fit to have these things.

MR. CHAIRMAN: Take his assurance.

SHRI RAJAGOPAL NAIDU: Sir, I want to put a specific question to him. I want to know whether he means that general public utility includes contributions or donations for religious teaching institutions and places of worship?

MR. CHAIRMAN: He has said that.

SHRI RAJAGOPAL NAIDU: I want a specific answer.

SHRI M. C. SHAH: If religious teaching institutions and places of worship are public utility purposes they will be included in this.

SHRI C. D. DESHMUKH: I may add to what my hon. colleague has already said that the definition excludes only private religious purposes. I do not see from where he drew the inference

[Shri C. D. Deshmukh.]

that we will base our conclusions on the Income-tax Act and, therefore, there is a danger of general public utility being interpreted in a certain way. The definition in the Income-tax Act, as amended, only excludes annual income from property held in trust and other legal obligation for private religious purposes and the specific mention of private religious purposes seems to me clearly to safeguard public religious purposes.

MR. CHAIRMAN: Do you want to press the amendment, Mr. Gupte?

SHRI B. M. GUPTE: No, Sir, I want to withdraw it.

The amendment was, by leave, withdrawn.

SHRI J. R. KAPOOR: Sir, I want to say a word or two for clarification I want to understand the implication. Does the hon. Minister mean that an expenditure incurred over the construction of a temple or a mosque is covered by it? And, secondly, does the hon. Minister think that general public utility is almost the same thing as sectional public utility? Supposing an institution or a school is constructed and run only for the benefit of the Brahmins or only for the benefit of the Parsees, will that also come within public utility purpose or not?

10 A.M.

SHRI M. C. SHAH: If it is open to the general public, it will come under it. If the school is donated by a certain person and if there is no clause that certain sections will not be admitted in other words, if there is no restriction that only students of a certain community will be admitted and it is open to the general public, then it will be included.

SHRI J. R. KAPOOR: My specific question is, a school is open only to Parsees or only to Sikhs or only to Hindus. Will it or will it not come under "public utility purpose"?

SHRI M. C. SHAH: Public charitable purposes include relief of the poor, education, medical relief, etc. The word here is 'education' and, therefore, public charitable purposes include relief for the poor, education or whatever it may be. Then you have "the advancement of any other object of general public utility". Education of public is not there, but education is there

SHRI B. B. SHARMA: Supposing a gentleman erects a temple of Vishnu and dedicates certain property to it and dies suddenly within two years. Do you mean to say that that will be assessed towards estate duty because it is not for any general public charitable purpose?

SHRI C. D. DESHMUKH: I think if it is a Hindu temple it is general public utility.

KHWAJA INAIT ULLAH: There are temples where the general public cannot go. Even yesterday Shri Vinoba Bhave was asked not to enter a temple.

SHRI C. D. DESHMUKH: That is against the law and so on. One does not take extreme cases, but it is not the intention that when somebody builds a temple it must be open to every individual before it is treated as a general public utility charity.

SHRI B. B. SHARMA: That has got to be clarified in law. It is not a question of intention; it has got to be clarified beyond doubt.

MR. CHAIRMAN: The question is:

"That clause 2 do stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

MR. CHAIRMAN: Motion moved:

"That clause 4 do stand part of the Bill."

SHRI B. M. GUPTE: Sir, I move:

"That at page 3, lines 47-48, the words 'within twelve months after the commencement of this Act and may thereafter' be deleted"

Mr. CHAIRMAN: Amendment moved:

"That at page 3, lines 47-48, the words 'within twelve months after the commencement of this Act and may thereafter' be deleted."

SHRI B. M. GUPTE: Sir, this amendment of mine is on the same lines as the earlier one that I had moved. In my opinion, even if these words are deleted, there will be no effect on the appointment of the valuers because, nobody is going to ask for *mandamus* if they are not appointed within twelve months.

Nobody is so much interested in paying estate duty. The work of the Government itself will be held up if these appointments are not made. I, therefore, submit that there is no necessity at all for these words. It is from the point of view of accurate drafting that I have moved the amendment.

SHRI RAJAGOPAL NAIDU: Sir, I am talking on the clause, not on the amendment. Sir, at the first reading and also at the time when the hon. Minister gave the reply, he said that only on questions of law, a provision has been made for appeals to the High Courts and the Supreme Court but, on a question of fact, no, appeal lies either to the High Courts or to the Supreme Court. Sir, if I am right, the practice in the United Kingdom seems to be that appeals lie to the High Court both on a question of fact and on a question of law. It is very difficult to differentiate or draw a line and decide as to what is a question of fact and what is a question of law. A question of fact is always mixed up with questions of law and there can be no question of law without questions of fact being inter-mingled with it so closely that we cannot differentiate as to what is a question of fact and what is a question of law. So my submission would be, Sir, that when we have been following closely the English law with regard to the drafting of the Estate Duty Bill and when there is a practice in England for reference to the High Courts both on questions of fact and on questions of law I fail to see, Sir, why that method should not be adopted in our country also. Only that much I wanted to say.

DR. P. C. MITRA: Sub-clause (3) of clause 4 reads "The Central Government shall appoint a sufficient number of qualified persons to act as Valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons." What is meant by 'qualified' persons? 'Qualified' has not been defined here. I ask: What will be their qualifications?

Sub-clause (5) of clause 4 reads. "All officers and persons employed in the execution of this Act, other than Valuers, shall observe and follow the orders, instructions and directions of the Board." Whose orders will they follow?

SHRI C. D. DESHMUKH: Their conscience.

SHRI M. C. SHAH: Turning to the amendment of my friend Mr. Gupte, I do not understand what purpose will be served by accepting his amendment. As a matter of fact there should be a statutory obligation on Government to appoint the Valuers within twelve months and that is there. If this statutory obligation is removed, the Government will be free to appoint the Valuers at any time it likes—this is what the amendment seeks to effect. What there is in it, I do not understand.

SHRI B. M. GUPTE: If you do not appoint them within a year the work will be held up.

SHRI M. C SHAH: So it is better to have the statutory obligation on the Government. I am sorry there is no meaning in this amendment. There

[Shri M. C. Shah.]

is no improvement aimed at and so we cannot accept the amendment.

About the points of fact and of law raised by another hon. Member, I think, when we come to clause 61 or so dealing with appeals, we can deal with the matter. Just now there is no amendment regarding that point. The provision relating to appeals to the Board and the scheme of the Valuers will be explained later on when that clause comes.

With regard to Valuers, practically they will not be Government servants. The valuers will be people who have some technical knowledge of valuation in the matter of immovable property, in the matter of the assessee's securities, etc. There will be different types of valuers and they will not be Government servants. There will be a panel of valuers and they will have to be paid a certain commission which will be fixed later on by the Government on the valuations made by them of the properties. So they must act according to their conscience. They must be independent. The qualifications of the valuers will be prescribed in the Rules. They cannot be in the Act itself and therefore the qualifications have not been mentioned in sub-clause (3) of clause 4.

DR. P. C. MITRA: Under whose orders will he do such work?

SHRI M. C. SHAH: Please read the sections coming later on. When there is an appeal made to the Board of Revenue against a valuation there is a provision that if the assessee insists that the question of valuation be referred to the valuers and if the Controller thinks it proper, he can choose a valuer from the panel which will be formed by the Government and which will be notified. The assessee can select one and the revenue authorities will select one and if there is a difference of opinion among the two there is provision for a third umpire. As a matter of fact, they are independent people. They cannot be under the orders of Government. Their work will be to value the property. The question will be referred by the Controller to the valuers that a particular property may be valued and then they will value that property and will submit a report of valuation to the Controller and their valuation will be final and if there is a difference of opinion...

DR. P. C. MITRA: Finally adopted by whom?

SHRI M. C. SHAH: If you kindly read the section further, there will be, as I said, a panel of valuers appointed by the Government in the different zones. From this panel of valuers the assessee will have to choose one valuer in each individual case and the revenue authorities will choose another. These two valuers will value the property and send a report of the valuation to the Controller and that report will be accepted.

DR. P. C. MITRA: Will there be fees for the valuation?

SHRI M. C. SHAH: I have already said that there will be a scale of charges for their remuneration fixed by the Government.

SHRI A. S. KHAN: Sir, the speech just made by the Minister raises a very important question. The Minister said that these valuers will not be permanent and they will be selected from time to time from among experienced people and they will be paid a commission on the valuation. If that is going to be the case, it will be in their interest to raise the value so that they may earn more commission out of it.

SHRI M. C. SHAH: We are just going to have the technical experts on the one hand. It has been objected to as to why there is not an appeal against the valuation to the Controller. Valuation is a very difficult and technical type of work which will have to be done with the assistance of some experts.

MR CHAIRMAN: The hon Minister has already replied to the clause and discussed the important issues. The whole point is this The valuers may be selected but they are deemed to be decent people and therefore other questions do not arise.

Do you press the amendment, Mr. Gupte?

SHRI B M GUPTE. I beg leave to withdraw the amendment.

The amendment was, by leave, withdrawn.

MR. CHAIRMAN: The question is.

"That clause 4 do stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill

Clause 5 was added to the Bill.

MR. CHAIRMAN: The motion is

"That clause 6 do stand part of the Bill."

There is one amendment of Mr Nausher Ali. He is not here and so that amendment drops. Any remarks?

KHWAJA INAIT ULLAH: I seek some clarification, Sir. Clause 6 reads: "Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death." It means that if any man possesses any property which he could not sell in his lifetime then that property will not be taken as the deceased's property. There are some properties in India which were made long ago as gifts to their descendants and only their income can be taken by their descendants and they cannot sell these properties. You will find so many, especially among Muslims—that is what is called Waqf-ul-Aulad. They can meet every kind of expenditure from the income out of that property but they are not authorised to sell the property and they cannot dispose of these properties. Am I to understand, Sir, that this class of properties which were made as gifts some hundreds of years ago or long ago to their sons and daughters with this intention that they could not sell them but could only enjoy the profit of that property, will not come under this clause and will not be subject to estate duty?

[MR DEPUTY CHAIRMAN in the Chair]

SHRI RAJAGOPAL NAIDU: If you read the illustration under clause 6 which was given in the Bill that was introduced in the House of the People originally—it is not there now. .

MR DEPUTY CHAIRMAN: There is no illustration now.

SHRI RAJAGOPAL NAIDU: This was the illustration, Sir, given in the Bill as originally introduced in the House of the People A devises a house to his son, subject to a power for A's wife by deed or will to charge on it a sum of rupees one lakh. On the wife's death estate duty is leviable in respect of this sum as property of which she was competent to dispose and this is so whether she exercised the power or not Sir, this will lead to hardship in my opinion because where that lady in whose favour this gift has been made with permission to charge on that estate to the extent of one lakh, if she has exercised that power it is all right, but suppose she has not exercised that power, my submission is that it will lead to great hardship. So this anomaly I think should be removed If A has devised a house to his son subject to a power for A's wife by deed or will to charge on it a sum of one lakh of rupees, and if that wife has not charged this estate of that sum, it will lead to great difficulties. I wish the hon. Minister explains this position as to why whether the charge has been made or not the estate is made liable to tax.

DR P C. MITRA: Many families are there in Midnapore District in Bengal who have got estates under *badshahi panja* from Nawab Alivardhi

[Dr. P. C. Mitra.]

Khan. They can enjoy the property but cannot sell it. Will that property come under this act?

SHRI C. G. K. REDDY: Certainly.

KHWAJA INAIT ULLAH: If they cannot dispose it of?

DR. P. C. MITRA: They never can be disposed of. Those families and their descendants have been enjoying that from the time of Alivardhi Khan up till now. My maternal uncle's property for instance.....

SHRI M. C. SHAH: The criterion will be whether he is in a position or whether he is entitled to dispose of that property. If he is entitled to dispose of that property, that property passes on his death. If a property cannot be disposed of by a person then it cannot come in. But I am sorry I do not follow the hon. Member's question

DR. P. C. MITRA: One family.....

MR. DEPUTY CHAIRMAN: You must finish all your questions at one time. You cannot go on carrying on a discussion like this.

DR. P. C. MITRA: One family has got property from Nawab Alivardhi Khan.

MR. DEPUTY CHAIRMAN: Please address the Chair.

DR. P. C. MITRA: It is *panja* to the family and its descendants. They are not entitled to sell the property. but they can enjoy the income from that property. That is the position. So many years have now passed. They have not sold it; in fact they cannot sell it. So I want to know whether that property will come under this Act or not.

SHRI M. C. SHAH: I think my friend Khwaja Inait Ullah raised a point. He possibly referred to *waqf-ul-aulad*.

KHWAJA INAIT ULLAH: Other trusts also like that.

SHRI M. C. SHAH: It is a trust and only 75% is payable to the waqif or his family. It is not different from any settlement made by anybody else for providing another gentleman the major portion of the interest as determined by the settlor himself. There is no reason whatever why merely because it is called a waqf exemption should be granted. If in a particular case the settlor himself is completely excluded and if a period of two years has passed since the gift of the waqif, there will be no duty as has been provided for.

As for my friend Dr. Mitra's point if the succession is not to be recognised by the Government then there is no cesser of interest. But if there is cesser of interest at the time of death, then the successors of the deceased will be liable. It is very clear.

MR. DEPUTY CHAIRMAN: The question is.....

SHRI RAJAGOPAL NAIDU: Sir, my doubt has not been cleared by the hon. Minister.

MR. DEPUTY CHAIRMAN: Has the hon. Minister got any reply to his point?

SHRI M. C. SHAH: I have not followed his point, Sir. I am sorry.

SHRI RAJAGOPAL NAIDU: My point is that if A devises a house to his son subject to a power for A's wife by deed or will to charge on it to the extent of Rs. 1 lakh, it is said that on the death of the wife the estate duty is leviable whether she exercised that power or not. If she has made that charge, I can say there is some meaning in it. But suppose the estate is not charged to the extent to which she was authorised to do, then it would be a hardship if the property is made taxable. I would request the hon. Minister to read the illustration given in the Bill as introduced in the House of the People.

MR. DEPUTY CHAIRMAN: You have made your speech, Mr. Naidu. You cannot repeat it.

SHRI RAJAGOPAL NAIDU I am only pointing out to the hon Minister where the illustration could be found because I find he is searching for it It is on page 31

SHRI M C SHAH It is very clear She has been given this power to raise one lakh and can dispose of it in any way Well, that is a property worth a lakh and it must be chargeable for duty It is very clear

SHRI RAJAGOPAL NAIDU With the permission of the Chair, Sir, she is entitled only to enjoy the property as a limited owner And she is authorised to charge on the property to the extent of a lakh of rupees If she has charged the estate with one lakh there is some point in it

SHRI M C SHAH I think it is very clear She had a power to raise one lakh That much interest she had, so that even though she has not exercised that power she had that much interest and that interest passes

SHRI RAJAGOPAL NAIDU Suppose she has really charged Is that taken into account in computing the estate duty?

SHRI M C SHAH If you read clauses 6 and 7 together, it will be clear. If there is interest passing on the death, then it will be chargeable and according to clause 6 it will be And if there is limitation under clause 7, that will apply Clauses 6 and 7 if read together will make it clear

MR DEPUTY CHAIRMAN The question is

"That clause 6 stand part of the Bill"

The motion was adopted

Clause 6 was added to the Bill

Clauses 7 and 8 were added to the Bill

MR DEPUTY CHAIRMAN Clause 9 There are seven amendments to this clause.

SHRI H N KUNZRU Sir, I beg to move

'That at page 5, lines 24 and 25 be deleted"

I also beg to move

'That at page 5, for lines 26 to 29, the following be substituted, namely.—

'(2) The provisions of sub-section (1) shall not apply to—

(a) gifts made for public charitable purposes,

(b) gifts made in consideration of marriage, and

(c) gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding five thousand rupees in the aggregate' '

SHRI J S BISHT (Uttar Pradesh): Sir I beg to move

"That at page 5, for lines 24-25, the following be substituted, namely —

'Provided that gifts may be made for public charitable purposes at any time before death."

SHRI KISHEN CHAND (Hyderabad) Sir, I beg to move

"That at page 5, line 25, for the words 'six months' the words 'up to the time of death' be substituted'."

KHWAJA INAIT ULLAH Sir, I beg to move .

"That at page 5 line 24 after the word 'charitable' the words 'educational and religious be inserted"

MR DEPUTY CHAIRMAN Mr Nausher Ali He is not present Mr C G K Reddy has given notice of an amendment at 8-10 A M today As it is barred by time, it is out of order

SHRI J R KAPOOR Sir I have also given an amendment this morning Before the Chair gives a ruling on the subject, may I respectfully submit that in this House in the matter of procedure we have not been very

[Shri J. R. Kapoor.]

technical and we have been going on observing more of equity than of technicality. In this connection, I may draw the attention of the House to the fact that though it was necessary that the motion for consideration of this Bill should be given two days prior to the time when this would be taken for consideration, that was not the case. The notice of consideration of the Bill was given on the 15th some time in the afternoon and we began considering this in the early morning of the 17th. I am not objecting to that. I am only saying that we Members of this House have never stood on technical grounds. The Chair very generously and liberally has not been insisting too much on technical grounds. If that rule of notice of time can be waived in respect of the consideration of the whole Bill I would submit that too technical a view of the rules with regard to an amendment should not be taken. Moreover, the amendments are not entirely of a new nature; the amendments are already before the House and mine is like an amendment to an amendment; it is an improvement on the amendment. Sir, this list of amendments was supplied to us late in the evening of the 18th. Of course, we could not put in any amendment on the 19th and 20th —being holidays. Moreover, as I said, they do not cover any new ground.

MR. DEPUTY CHAIRMAN: Mr. Kapoor, the Chair has been indulgent to several Members on several occasions. This Bill had been before us long before it was circulated on the 15th. I think the hon. Members had had sufficient time to table all amendments. Moreover, your amendment is a substantive amendment; it is not an amendment to an amendment as you call it. Therefore I rule them out of order. The amendments and the clause are now open for discussion.

SHRI C. G. K. REDDY: The amendment that I wanted to move, Sir, was to exclude gifts to relatives whether by way of settlement on death or otherwise. I wanted that clause to be so amended (clause 27) that settlement of gifts to relatives will be excluded and any gifts meant for their successors or inheritors may be excluded. The reason why I wanted to move that amendment was that we are imposing tax on inheritors, legally and illegally; the holder of an estate is able to avoid that tax and then pass on this estate wholly or partly to his son or relatives who would normally have enjoyed it. I don't see how this estate duty would be effective. Even two years before the death of persons, as I have already indicated, there will be attempts, there have already been attempts, to see that almost all these estates belonging to rich landlords are settled immediately on their sons, daughters, relatives and others whom they wish should enjoy. The clause says: "whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide*."

I would like you to note the words *"bona fide"*. If the settlement is made *bona fide* on the 4 or 5 sons or one son, then, the duty will not be paid. As I have indicated already, so far as the *'bona fide'* part of the Bill is concerned, I do not know how the Government or the administration is going to establish or disprove the *bona fides* of a particular deal. It can be done in many ways. If you give also a legal exemption for the tax to be avoided, if you permit them to settle the entire property on the sons, successors and other relatives, I doubt if the hon. the Finance Minister would be able to expect even two crores of rupees.

As it is, even today, people are trying to settle their estates on their sons. Regarding that, the hon. Minister said that there are four points which should be satisfied so that this gift is made valid: (1) the donee must take immediate possession, (2) the donor must give up possession, (3) there should not be any retention of any kind of interest by the donor, and (4) there should be no secret arrangement. I should like to ask the hon. the Finance

Minister whether all the four points could not be satisfied by a *mala fide* adjustment? Is it difficult for a father having a property worth Rs. 4 lakhs to settle it on his four sons or other members of his family, making a *mala fide* deal today and making it appear that it was made two years ago? As I have already pointed out, one can always get stamp paper in a big city dated two or even 10 years ago. You do not even have to register it. The father can see that all the property is gifted away two years or ten years previous to death. He can still hold an interest or make himself the executor or the manager of this estate on behalf of his sons. How is it possible for the hon. the Finance Minister to prove that it is a *mala fide* transaction because the four points enumerated by him are completely satisfied. He may say that he has already given up possession; that the donees have already come into possession; that he is there only as a servant; and that there is no secret arrangement except the obvious arrangement that his son should get everything that he was going to leave on his death and that the State shall not touch a pie of it. I would ask the hon. the Finance Minister whether he seriously thinks that there will hardly be an estate which will be taxable after giving the exemption, after providing such loopholes in the law itself.

This loophole, Sir, is not merely an exemption. It is an invitation, not that those gentlemen needed the invitation of the hon. Minister or the invitation included in this Bill. Even six months ago, as I have already said, people had been pestering me and asking me whether the Bill was going to be passed. Last week, I got two telegrams asking me whether there was any likelihood of its being passed in this session or its being postponed to the next session. The purpose is quite obvious, to gift away the property to their sons.

I cannot understand how there can be a gift from a father to a son. It will come automatically. Where is the question of a gift? There can be a gift for some public purpose. If you allow the property to be gifted away to a son, then you are going to see that there is no tax leviable on that estate. Then, in that case, everything will be gifted away. I ask the hon. Members present here, who may be fortunate or unfortunate in having large portions of wealth, to honestly tell this House whether they would or would not take advantage of this provision. I want to know from them whether, as soon as they go back from the session here, they would not gift it away to their sons. There can be nobody in this country, Sir, who would not take advantage of this provision. Even the honest people will do this thing and.....

DR. W. S. BARLINGAY: The property of the father may be self-acquired property.

SHRI C. G. K. REDDY: Are you not dodging the tax? It does not prevent a self-acquired property to be administered by oneself. Now, supposing I have a self-acquired property of Rs. 5 lakhs; I do not belong to a joint family, or let us say, *Mitakshara*. Then what will happen? I am going to gift it to my son. I say "I gift it to so and so." I make a perfectly honest and legal deed. And by another deed I appoint myself as the manager of the estate. I draw a salary. According to the four points enumerated by the hon. Minister, that cannot by any stretch of imagination be called a *mala fide* transaction. I can be a servant to my son. There are cases where partnerships have been registered, where companies have been registered, and where the actual proprietor has become the servant of that partnership. Now, I want to know from the hon. Minister how it is possible for the State to say that such gifts are *mala fide* in so far as attempts to escape the estate duty are concerned, because such gifts may not be *mala fide* according to the law as it exists.

How is he going to see that these four points that he has enumerated will apply in cases of this kind? I

[Shri C. G. K. Reddy.]

personally believe that they cannot be applied, if I gift it away to my children—if I do not have children, then to my near relatives. These points cannot in essence apply to any cases where I gift away property to the person who is going to inherit it in any case after my death. Then that means that it is a clear invitation for the dodging of this tax and legally escaping it. Now, I fear very much that not Rs. 14 crores, not Rs. 10 crores, not Rs. 2 crores, but not even a crore of rupees may be collected, because if you keep an open invitation like this, I cannot imagine of a man either in this country or elsewhere who will not take advantage of this clause.

Therefore, Sir, I should very much have liked to have moved an amendment and seen to it that in so far as the gifts for public purposes were concerned, only such gifts were exempted, and gifts for the personal enjoyment of the natural inheritors of an estate were definitely excluded from the operation of this clause. That would be my submission and that would have been the intent and purpose of my amendment. If the hon. Minister agrees with me and if it is possible for him to move an amendment, if not now—I see that it may not be possible at the present moment but if not now, then he must definitely keep this in mind. I can assure him that during the next two months, three months or six months of the operation of this measure, he will come to the same conclusion as I have, even before the passing of this Bill, that because of these two small words that have been added, anything is going to be gifted away if it has not already been done, to the natural inheritors of the estates all over the country.

THE LEADER OF THE COUNCIL (SHRI C. C. BISWAS): Long before this estate duty was thought of there have been numerous transfers of large proportions in the owners' lifetime, perfectly *bona fide*, and why should these estates be brought under this estate duty? There is no reason to assume that every gift must be a colourable transaction for the purpose of defeating this Act.

SHRI C. G. K. REDDY: To explain it again, I said a gift which is for the personal and direct benefit of a natural inheritor, an inheritor who would have got it in any case—such gifts should be excluded. I did not say that the gifts which would have gone to public institutions for charity or other things should not be exempted. I said that gifts which would have constituted a property that would have passed, that would have been deemed to pass, according to clause 4, such property should be taxed. But if you exempt these gifts, then you will not get anything. In that case, everybody is going to gift it away. That is what I meant. I do not think that every gift is *mala fide*.

SHRI B. P. AGARWAL (West Bengal): How would the hon. Member provide for cases where there is a widowed daughter and the father wants to make a gift to his daughter?

SHRI C. G. K. REDDY: A widowed daughter or any other female dependent on a joint property cannot, even if you want to gift it, lay claim to that gift. There is no power unless that property is self-acquired.

SHRI B. P. AGARWAL: For daughters!

SHRI C. G. K. REDDY: It cannot happen. No head of the family, of an undivided family, has a right to gift away anything to anybody other than the natural inheritors of that joint family property. It is not possible for a father to give to a widowed daughter something which belongs to the ancestral property He has no right to do so. As soon as he dies, the property goes to the joint family. (*Interruption.*)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI H. N. KUNZRU: Mr. Deputy Chairman, the amendment that I have moved for the deletion of lines 24 and

25 in clause 9 is a consequence of the amendment to sub-clause (2) of clause 9 that I have given notice of. I shall therefore deal only with the proposed amendment of sub-clause (2). That amendment, if I may read out, Sir, runs as follows:

> "That at page 5, for lines 26 to 29, the following be substituted, namely:—
>
> '(2) The provisions of sub-section (1) shall not apply to—
>
> (a) gifts made for public charitable purposes;
>
> (b) gifts made in consideration of marriage; and
>
> (c) gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding five thousand rupees in the aggregate.' "

Now, Sir, the existing sub-clause (2) deals with two kinds of gifts—gifts made in consideration of marriage and gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, provided these gifts do not exceed Rs. 5,000. Now, Sir, paragraph (c) of my amendment which relates only to gifts which are proved to have been part of the normal expenditure of the deceased is a part of the existing sub-clause (2). The other two paragraphs, (a) and (b), introduce new conditions under which gifts made for public purposes should not be chargeable to estate duty.

I shall therefore deal with only these two paragraphs. Sub-clause (1) of clause 9 deals with gifts made for public charitable purposes. Sir, my hon. friend, the Finance Minister, when he was speaking eloquently about the effect of the Bill, said that the estate duty was in force in about 43 countries and that in everyone of those countries it had been recognised that gifts made shortly before death are not *bona fide* gifts but are made with the intention of defrauding the public exchequer. I do not know whether his attention has been drawn to the American law on the subject. I am dependent for my information on Buehler's Public Finance which was published in 1948. I believe that this book deals with the American law relating to death duties as it stood in the year 1946 or 1947. I do not know whether the law has been changed since then. I hope that it has not been, but in any case the exceptions made under the law as it existed up to 1947 seem to me to be desirable. Buehler says on page 592:

> "All contributions made by the deceased in his will to Corporations operated exclusively for educational, scientific, literary, religious or charitable purposes as well as to any American Government may be deducted."

I admit that the language here is not "shall be deducted." I do not know in what circumstances such gifts may be deducted from the principal value of the property but the principle that gifts made for public charitable purposes may be deducted from the principal value of the estate is recognised or at least was recognised in the United States of America up to the year 1947. I think that this is a very good precedent, and that we should follow it, but there are other arguments to support this amendment. Suppose a man donates three or four lakhs of rupees to a school for a suitable building and he dies soon afterwards, *i.e.* within six months of the making of the gift.

PANDIT S. S. N. TANKHA: Public charitable gifts must be made six months before.

SHRI H. N. KUNZRU: My hon. friend, Mr. Tankha, thinks that if the man dies within six months of making the gift, the gift will be taxable, but if he had made the gift six months before his death, the gift will not be taxable. What I am asking for is that gifts for public charitable purposes should be exempted from the payment of estate duty, no matter when made The American law, as it was, at least exempts gifts made by will to public

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charitable institutions. That is, gifts which an institution would receive even after the death of the donor might be exempted or might have been exempted from the payment of estate duty. I want the same principle to be followed, and the illustration that I have given is, I think, a very useful one. Suppose a man makes such gifts even a month before his death, would such gifts, whether *bona fide* or *mala fide*, be really against public policy? Will they serve a good purpose or not? You can regard it as a colourable transaction if it does not serve any public purpose but is meant at the same time to evade the payment of estate duty, but when the gift is decidedly useful in the public interest when it is made for a purpose that we all value, is there any reason why it should not be made exempt from duty in all circumstances? My hon. friend, the Finance Minister, spoke of the circumstances in which sometimes wills are written. Yes, sometimes wills are written under such conditions as to lead to a great deal of litigation but the courts afterwards decide the matter, and if there is any doubt about the *bona fide* character of the gifts made by a man before his death, the matter will be settled by the court as other matters that go before it are settled. This raises, therefore, no special difficulty.

There is one other matter that I should like to refer to in regard to this paragraph. Taxation is fairly high in this country, and everybody who has to collect money for public institutions knows how difficult it has become during the last seven years to persuade anybody to give any substantial sum for any public purpose. I have had the misfortune, Sir, of trying to collect funds for a number of purposes, but I have never found my task easy. Even people from whom good help might be expected plead in excuse the incidence of taxation and the various impositions to which they are subject. Now, when the Estate Duty Bill is passed, they will have one more excuse in their armoury for refusing to part with money even for a highly meritorious public purpose. Should not the Government, in these circumstances, deal with this matter of gifts for public charitable purposes with some leniency? I don't accuse the Finance Minister of having been unduly severe or even severe. By saying that such gifts will be exempt from the estate duty if they are paid six months before the death of the owner, he has shown a willingness to make an allowance for the character of the gift. I only ask him to carry his principle further on the ground that in a country like India it is desirable to go further. I don't know what the policy of the Government is. Do they want really that while the Government may be democratic, in form, it should become economically totalitarian? There may be private enterprise but if the making of gifts for public purposes cannot be safely made from the point of view of the payment of estate duty, then I submit that it will virtually come to this that public workers will have to seek financial help from Government for every institution that they are interested in. I am sure the Finance Minister does not desire this state of things He wants that along with private enterprise in economic matters there should go public spirit in matters pertaining to the public good and in order to bring a connection between these two things, that is public spirit and economic enterprise, it is desirable to encourage gifts for charitable purposes.

I come to sub-clause (2)—gifts made in consideration of marriage. It may be thought that sub-clause (1) covers such gifts; but it will, only if a period of two years elapses before the donor dies. Let us take an illustration to make this clear. A girl is married in her father's life-time. She receives jewellery worth Rs. 25,000 because her father's circumstances were such as to enable him to make this gift to his daughter but if he dies within two years of making the gift, then it seems to me that a tax will have to be paid on the value of the jewellery. I don't know what is the effect of clause 33.....

KHWAJA INAIT ULLAH: If it is above Rs. 1 lakh.

SHRI H. N. KUNZRU: I have assumed that the jewellery is worth Rs. 25,000. Let us suppose that the man leaves behind a property worth more than Rs. 1 lakh. His estate will then have to pay estate duty. Will this sum of Rs. 25,000 which is the value of the jewellery given by him to his daughter in consideration of her marriage during his life-time but within two years of his death form part of the property on which estate duty will have to be paid?

KHWAJA INAIT ULLAH: Never.

PANDIT S. S. N. TANKHA: It is certainly a perfectly *bona fide* transaction, but still two years must elapse before death to save it from duty.

SHRI M. C. SHAH: Yes.

SHRI H. N. KUNZRU: My hon. friend Shri Shah says 'Yes'.

SHRI M. C. SHAH: Excepting Rs. 5,000 as has been provided for. It is under sub-clause (2).

SHRI H. N. KUNZRU: Yes. Only a sum of Rs. 5,000 will be deducted and estate duty will have to be paid on the remaining Rs. 20,000. If a man's circumstances are such as to enable him to make such a gift, if it is found that in the case of the marriage of another daughter he made a similar gift, then there is every reason to think that the gift was a *bona fide* gift and made in accordance with his circumstances. There is nothing to show that it was made in order to evade the payment of estate duty. Are you going to penalise the daughter of a man who has the misfortune of being wealthy? Is it your intention to make a distinction between two daughters one of whom is married two years before the death of her father and another within two years of the death of her father? I think this is undesirable and that the exchequer will not lose much if it allows gifts made in consideration of marriage to be excluded from the property on which estate duty will have to be paid.

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SHRI C. G. K. REDDY: I should like to ask for clarification from the hon. Member. Supposing, according to his amendment, a father has no son, he has only two daughters, would it be in order for the father to gift away all his property before his death and yet be exempted?

SHRI H. N. KUNZRU: My hon. friend puts forward an extreme case.

SHRI C. G. K. REDDY: It will apply.

SHRI H. N. KUNZRU: That cannot prove the rule, but what do we find in actual practice? A man has crores upon crores with him. He has two or three sons. He gives them limited allowance. They ask him for a higher allowance but he does not listen to them. Now when this is the state of things, can we believe that human nature will change as soon as the Estate Duty Bill is passed and a man who has one daughter or two daughters or more will be in a hurry to part with all his property with the object of cheating the exchequer? This is a far-fetched assumption; in a particular case the man may give a large sum of money to his daughter but I find it very difficult to believe that a man will, in his own life-time, make himself penniless in order to have the satisfaction of feeling when he is on his death-bed that no death duty will have to be paid on his property to the wretched Government that has passed the Estate Duty Bill. Let us take such circumstances into account as are normal. If you think that this concession is likely to be abused, by all means introduce some restriction which will not make any concession illusory. The other day I pointed out that such gifts were allowed under the English law too. I suppose as we are going to find out how the law relating to death duties is administered in England, we may as well follow the practice there. If no harm has resulted there from unlimited gifts being allowed to be made in consideration of marriage, I see no reason why we need be unduly nervous. There is another thing that we should

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consider. This language 'gifts made in consideration of marriage' may relate to a man's own marriage and the English law does contemplate gifts made in connection with such marriages. When a man is married, he himself is not likely to settle property of a large value or give very costly jewellery to anybody except his wife. And even if the provision relating to gifts in consideration of marriage were retained as it is in the Bill before us, he could still settle valuable property on his wife. There would be nothing to prevent him from doing so. Taking all these things together, I think that a strong case has been made out for the amendments contained in parts (a) and (b) of subclause (2). I do not think, Sir, it is necessary for me to read out the passage relating to this particular matter, that is to say, gifts made in consideration of marriage, from Dymond's "Death Duties". I believe I read it out the other day. I do not know what the intentions of the Finance Minister are; but I feel, and feel very strongly, that the amendment of which I have given notice deserves to be accepted by him.

SHRI J. S. BISHT: Sir, I have moved my amendment:

> "That at page 5, for lines 24-25, the following be substituted, namely:—
>
> 'provided that gifts may be made for public charitable purposes at any time before death.'"

Sir, of all the amendments to clause 9, this is the most important, and for that reason I specially recommend it to the hon. Finance Minister for his consideration and acceptance. The Finance Minister in his speech advanced certain reasons and arguments in regard to gifts and the scale or rate of payment of the estate duty. I was hoping that he would give us the reasons as to why gifts for public charitable purposes should not be excluded. After all a man when he makes a gift for public charitable purposes does not make it in the interest of his family or his heirs or descendants. In the case of public charitable purposes, the gift property passes out of the estate of the deceased person the moment he has made that endowment. The Finance Minister has already conceded that . .

SHRI C. C. BISWAS: Sir, on a point of order. This amendment in the form in which it now stands does not seem to be relevant to the clause. The amendment seeks to substitute the words: "Provided that gifts may be made for public charitable purposes at any time before death." for lines 24 and 25. But the provision in the Bill does not prevent anybody from making a gift. It does not say that nobody can make a gift. That right is still there and may be exercised any time before death. He can do that even under the present Bill; but all that the Bill says is that if the gift is made within a certain period and not earlier, then the subject matter of the gift will be treated as part of the estate and will be deemed to pass along with the rest of the estate. Therefore, this amendment is out of order and not relevant to this clause.

SHRI J. S. BISHT: It only means that the exemption limit extends right up to the time of death.

MR. DEPUTY CHAIRMAN: But your amendment is badly drafted.

SHRI J. R. KAPOOR: It is just a drafting matter.

SHRI J. S. BISHT: But there are other amendments to the same effect. The point in all of them is the same.

MR. DEPUTY CHAIRMAN: You can speak on the clause then.

SHRI J. S. BISHT: In the first place the Finance Minister has conceded it in one type of gifts, namely, gifts made on deposition or trust in favour of, say a descendant or any other person. But in the case of these gifts for public charity purposes he has reduced the time limit to six months. That, in fact, is itself a concession, but it is more or less a sort of arbitrary concession. Nobody can foretell when he is

going to die. He may not expect to die within six months, but there may be an accident or heart failure, or any other thing and he may die.

Secondly, if you remove this limit of six months and allow the man to make gifts for public charitable purposes right up to the time of death, that will encourage people to make gifts for objects in which they are interested. For instance a man of arts may be interested in making a gift for some art institution or maybe to the study of some science or to some university. It may be his desire to make the gift some time and as he is hale and hearty, he may be expecting to live for some years more; but then it may just happen that he dies within six months, and this sort of gift will not be encouraged. We have to encourage the making of such local gifts. Then there are areas in, say, Assam and other hilly regions and also some places in the hills—there are some places in the Uttar Pradesh—and those who made fortunes in Assam would like to make some charitable gifts for public purposes in their own places, for an educational institution, for instance, in their own particular locality. This sort of gift should be encouraged. If something happens and he is not able to make this gift sufficiently early, he should be allowed to do so even at the last moment. There are similar instances in the case of the integrated States, like Saurashtra, Rajasthan or Orissa. People living for centuries in, Bikaner, for instance, would like to make certain gifts to such public charity purposes in Bikaner or Jaipur, or say in Pilani. There are such charitable-minded people who have made a fortune and who want to make gifts of public utility. Why should they not be allowed to make these gifts and why should not such gifts be exempted from the payment of estate duty even though they may be made only at the time of death?

And then there is this point which is not clear to me. Who is to pay this estate duty on the gift made within six months of death? A man makes a gift to an institution, say an educational institution in Pilani, of Rs. 10 lakhs. Let us say "X" makes this gift of Rs. 10 lakhs for a particular object, and he dies before six months are over. After that period, who pays the duty that is payable on this gift? Will the heir pay it or the institution that receives the gift? The institution will not pay and if the registered deed of gift has been made and the man has taken charge of the property, he too will not pay. In that case it is not clear who will be the person who will be liable to pay the duty on a donation of that type. I therefore, submit that this period of six months be omitted and the clause amended in the manner suggested either in the amendment of Shri Kishen Chand or Dr. Kunzru so that gifts made right up to the point of death may be exempted from payment of estate duty.

SHRI KISHEN CHAND: Mr Deputy Chairman, the hon. Finance Minister has, in his speech, said that nobody knows the time of death and therefore, people are very diffident in making any gifts during their life-time. They are reluctant to give away control over the management of that property during their life-time. Our aim is to have a Welfare State and when that aim is placed before Government, they always plead inability on financial grounds. If the State cannot help in the attainment of that ideal will it not be better if every encouragement is given to the public to come forward and help to some extent in the attainment of that ideal? The two main objectives will be education and public health and if, as pointed out by Shri Kunzru, people are reluctant to give donations and charities, they will have the added fear that if they make big donations and keep only a small portion for their descendants and dependents and if the duty is to be paid on the entire amount by the descendants or the dependents, even on that part which is given free to charity, it may happen that the dependents may not get anything at all. A concrete example has been given by an hon. Member that if Rs. 10 lakhs are given to a hospital and only Rs. 2 lakhs are left to

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the descendants, the duty on Rs. 12 lakhs will be over Rs 2 lakhs.

KHWAJA INAIT ULLAH: No

SHRI KISHEN CHAND: Yes, it will be. The estate duty will be Rs. 2 lakhs on an estate of Rs. 12 lakhs. The net result will be that if the hospital or the charitable institution does not pay the duty then the remaining dependents who are going to get a share in the Rs. 2 lakhs, will have to pay the entire duty. In this way, we are discouraging people from giving a large portion of their property for charitable purposes It would have been better if the hon. Minister had considered this type of anomalies. An easy solution of this is to permit people to give these gifts free of the estate duty right up to the time of the death. By this one alteration, all sorts of complications are avoided. The hon. the Finance Minister has stated that the proceeds from this duty will go to the States. It is not within the province of Parliament to prescribe for what purposes the proceeds will be spent by the States. Will it not be better, Sir, if direct encouragement is given to public spirited people to spend that money directly on welfare activities than to give it in the shape of estate duty which will be sub-divided between the States to be utilised for any purpose? It will be far easier to approach a man in a hale and hearty condition and to tell him that if he gives these gifts subject to the condition that these may be utilised only after his death, it may be possible to persuade people to give a large part of their accumulated wealth. You want a man to give during his life-time. But you do not know the psychology of the rich people. A rich man is more greedy than even a middle-class man and he wants to stick to his wealth till the last moment. It is wrong to say that people will gift away all their wealth. It has not happened in any one of the 43 countries where estate duty has been levied so far A small number of people may gift their properties away but the majority of the people stick to their wealth till the last moment; in spite of knowing the fact that they will not carry this wealth to the other world, they stick to it. It will be far easier if some sort of incentive is given in this Estate Duty Bill to encourage these people to give a large part of their accumulated wealth for charitable purposes. Therefore, I would suggest to the hon. Minister that even though he may not accep the amendment now, he may keep thi in view when an amending Bill i brought forward soon.

Only slight alterations will have t be made: the words "six months" ar to be substituted by another five words "up to the time of death". Such a slight variation of two words wil bring ever-lasting credit to him b encouraging public charitable purposes.

MR. DEPUTY CHAIRMAN: Does not "public charitable purposes" include "education"?

KHWAJA INAIT ULLAH: No, Sir we have discussed this in clause 2.

I have moved, Sir:

> "That page 5, line 24, after the word 'charitable' the words 'educational and religious' be inserted.

Sir, we have discussed this in clause 2 when we were discussing the meaning of public charitable purposes. No doubt the hon. Minister could satisfy us that public charitable purposes include relief of the poor, education medical relief and the advancemen of any other object of general public utility.

MR. DEPUTY CHAIRMAN: Education is already there. He explained "public charitable purposes." He said that it would include that also provided it is for a public purpose.

KHWAJA INAIT ULLAH: If this word "charitable" is deleted then it can be very clear; it may be for public purposes; not that everything can come in. If it is public charitable purposes, then, I think the religious purposes

do not come within it. The hon. the Finance Minister may say that religious purposes may come within it but I do not understand how. Sir, after the passing of this Bill, we are going to increase litigation throughout India because when a Hindu or Sikh or Muslim dies leaving a gift to a temple or a gurdwara or a mosque, nobody can say that this will come under general public utility. If the hon. Minister means that the Muslim or Hindu can give a portion of his property to a *mandir* or a mosque, he should have clearly said that these also will come within charitable purposes. After the explanation of public charitable purposes, a mosque cannot come under this definition; neither can a *mandir* come under this definition. So, we should have the words "educational and religious" or we should delete the word "charitable". I am sure, Sir, as is known to everybody, that giving any gift to a mosque is not a charitable act. You can have the meaning of "charitable" in any way but dictionaries show that the word "charitable" has never meant and will never mean religious work. I don't think the hon. Minister will accept the amendment but I want to make a request to him. Under clause 32, we are going to give him more power to exempt certain things. By that clause, he can exempt such gifts which are given for religious purposes Then only it will serve the purpose; otherwise, it will never be clear by these words only that a man can make a gift for any religious purpose. I am against all these exemptions and I do not want any exemptions because a man having a property of more than one lakh of rupees, when he can give some gift to a mosque or to any charitable purpose, must give something to the Government so that the Government can develop India. But when the Government is going to pass this law—I am sure that the hon. Minister is going to exempt nearly all rich men—and when he is going to be very generous towards the heirs of rich deceased, I think he is not so generous to this religious purpose. I am smelling something of Communism in this because they don't believe in religion. We Indians care much more for religion than for other charitable purposes. So I request the hon. Minister to change these words and if he cannot change them, at least assure the House that no litigation will be increased by these words only and that the Indian Muslims or Hindus or Sikhs or Christians can give gifts to their chosen public charitable purposes as well as to their religious institutions. There may be some schools where the Quoran is taught. There may be some school where only the Vedas are taught. These educational institutions are also public institutions so that the Hindus can go to read the Quoran and the Muslims can go to read the Vedas. These institutions will be called religious institutions. I wish to stress that either these words may be changed or the hon. Minister should satisfy us that these public religious purposes will come under this provision, Sir. Thank you.

SHRI J. R. KAPOOR: Mr. Deputy Chairman, Sir, I whole-heartedly support the amendment moved by my hon. friend Pandit H. N. Kunzru, with one slight amendment if the Chair be pleased to permit me to do so. His amendment reads thus: "The provisions of sub-section (1) shall not apply to—(a) gifts made for public charitable purposes." If you permit me, Sir, I might insert only one word before the word 'public' and that word is 'prescribed', so that thereafter the amendment would read like this. "The provisions of sub-section (1) shall not apply to—(a) gifts made for prescribed public charitable purposes".

KHWAJA INAIT ULLAH: Prescribed by whom?

SHRI J. R. KAPOOR: 'Prescribed' has been defined in the Bill. Prescribed by the Central Government.

Parts (b) and (c) of the same amendment of Pandit Kunzru may stand as they are.

Failing this amendment, Sir, I would support the amendment moved by my hon. friend, Shri Kishen Chand.

Sir, with his usual thoroughness my

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hon friend Pandit Kunzru has made out a very strong and irrefutable case in support of his amendment and while moving this amendment he does not stand by himself in this House He has the support, I am sure, of almost every Member of this House who is not a member of the Government I make bold to say so because throughout the discussion in this House so far, this point has been supported by almost everyone of the speakers particularly the point relating to gifts made for public charitable purposes No Member who has already spoken has to the best of my knowledge said one word against the suggestion and therefore, it is obvious that every section of this House is strongly in favour of this suggestion or this amendment being accepted I hope and trust, Sir, that the hon the Finance Minister would not be so adamant and would not be so hard-hearted as not to accept this We have always found him to be soft-hearted and even sweet-hearted and we hope therefore, Sir that on this occasion

KHWAJA INAIT ULLAH Sweet hearted!

SHRI J R KAPOOR I wish he had heard what I am saying for I am sure he would have relished it Anyway I am sure that he would have due regard to the unanimous views and wishes of this House Sir I submit that the clause, as it stands is against public policy and is against public interests because if it is allowed to remain as it is it will discourage to a certain extent maybe a very substantial extent the making of gifts for charitable purposes Sir Members here like my hon friend Pandit Kunzru and some humbler persons like myself and many others who during the course of our public life have had occasion to collect money for charitable purposes, know how difficult it is to take out money from the pockets of the rich Many persuasions have to be made and many pressures have to be brought to bear upon them to make them contribute to public charitable funds If on the top of it all this clause is allowed to remain as it is the difficulties would increase rather than diminish And then is anybody going to gain thereby? If my suggestion is accepted Sir that the word 'prescribed' be inserted before the words public charitable purposes' then let us analyse what would the position be The position then would be that the Central Government would make out a list first of all and then amend it by increasing or decreasing the items contained therein from time to time, laying down therein as to which sort of public charities would be recognised by the Government for the purposes of death duty not being leviable on contributions to them even if the gift is made within the period of six months of the death of the deceased Now the estate duty which the Government proposes to realise is not to throw it off in the air Certainly it proposes to realise it for nation-building purposes and for social welfare activities The purpose of the Government therefore would be amply served even fully served if the donor selects one of those objects enumerated by the Central Government in the list of approved charities and makes a substantial contribution to it Now if on the other hand that gift is also subjected to death duty that will act as a very strong deterrent against charities being made Who suffers then? In the first place if the gift is made for anyone of the specified or prescribed purposes then the entire gift comes to the society It benefits those very institutions which would be benefited by the Government itself if it realises the duty and spends it for such purposes Obviously the duty in every case would be very much less than the entire amount of the contribution made for charitable purposes To illustrate my point Sir, suppose a man contributes Rs 5 000— I will not mention lakhs because such big figures are beyond the comprehension of poor man like myself—for the benefit of a prescribed charitable purpose and if the Government is to realise death duty thereon, then the Government will realise if the property left is worth Rs 1 00,000 about 5 per cent

KHWAJA INAIT ULLAH: Nothing.

SHRI J. R. KAPOOR: Let us not be too technical. Let us understand the particular meaning of what I am submitting. If the charity is only to the extent of Rs. 5,000 and the deceased leaves a property worth one lakh and Rs. 5,000 including this Rs. 5,000 also, then on this Rs. 5,000 the death duty realised would be Rs. 250. This is all that comes to the coffers of the Government Now because of this fear of an amount of Rs. 250 being realised out of the gift made by the deceased, the deceased is deterred from making a contribution of Rs. 5,000 to a public charitable purpose. Ultimately, the Government, of course, will get Rs. 250 when the man dies, leaving the property in his own hands at the time of death, but then this Rs. 5,000 which he would otherwise have contributed for a specified public purpose does not reach the public. So the Government or the public would be losing Rs. 4,750. Now, does it appeal to our sense of propriety? Is it in public interest? Is it in consonance with public policy? Does it not run counter to the very object which the Finance Minister has in view and we all have in view in bringing forward this measure?

SHRI C. D. DESHMUKH: May I know what he does with this Rs 5,000 if he does not make a gift?

SHRI J. R. KAPOOR: If he does not make a gift he might utilise it in any way he likes. Sir, there are moments and moments in the life of a man when he feels persuaded to contribute something for a charitable purpose. If at that time he is deterred from making this contribution, he might utilise the amount he has for some other purpose; he may purchase furniture, visit cinemas and theatres for aught we know. The whole money goes off. Let us even suppose he does not squander that money; he does not spend it away within that six months period. Even then what does the Government gain? Only Rs. 250. Even if the entire amount of Rs. 5,000 remains intact at the time of death which is very unlikely, the Government gets only Rs. 250 as death duty, whereas in the other case the full amount of Rs. 5,000 would have been donated for a specified charitable purpose and the object of the Government would have been fully served—not only fully served, but served so many times more. Rs. 250 in one case it gets; Rs. 5,000 it will get in the other case. Now this is a point which must be seriously considered by the hon. the Finance Minister. He is losing heavily by having this clause as it is.

Now, Sir, about that six months period. Is it not the experience of every one of us that one becomes charitable-minded only when one is nearing death? I have known cases, Sir, where persons who have been declared to be on the verge of death refused to believe that they were going to die. Doctors, in some cases to my personal knowledge, had declared that the man was not going to live for more than three, four or five months or even a year sometimes. But the doctors never say this to the patients. They say this only to the relatives or the attendants lest the patient should collapse. To the patient they will say 'You are getting on better and better, you will be all right within a short time' and so on. So the patient who never relishes the idea of dying encouraged by the assurances of the doctor feels that he has to live long and he need not part with any of his property for charities. It is only when he is faced with death that he feels like giving substantial charities. Now, why should we not encourage him to do it if just at the time of death he is inclined to give money in charity? If those charities are made taxable, you are dissuading him from making them.

Then, Sir, there would be so many administrative difficulties in this connection. I mentioned the other day while making my submission on the first reading of the Bill that we might take the case of a man subscribing Rs. 5,000 to the Hindu University and dying two or three months thereafter. The Hindu University would be liable

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to tax to the extent of the gift given to it

KHWAJA INAIT ULLAH That is not yet clear

SHRI J R. KAPOOR: It is all very clear I have not forgotten that Every beneficiary whether a living human being or an incorporate body will be liable And you have further provided under sub-clause (3) of clause 53 that every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Controller may allow, deliver to the Controller and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable Now, Sir, the Hindu University in this case is a person accountable for estate duty. How is the Hindu University to keep itself informed of the health and physique of the donor? And must it keep itself constantly informed of the date of death of the donors at least for this period of six months? How is the University to know about it, or for that matter how the various other institutions to whom the deceased may have donated are to know when the donor dies?

SHRI C. D DESHMUKH: Is it urged that they have no further interest in the donor?

MR DEPUTY CHAIRMAN It will be too fresh in their minds. They will know it.

SHRI J. R KAPOOR I did not follow the hon. Minister.

MR DEPUTY CHAIRMAN. The hon Minister wants to know whether the institution will have no further interest in the donor.

SHRI J. R KAPOOR They may or may not have, but there is a statutory obligation on them to submit this statement They cannot get out of it and if they do not submit this statement, they are liable for a penalty It is a criminal offence and the Vice-Chancellor of the Banaras University our hon friend who is not present here today, Acharya Narendra Deva would be hauled up for not submitting this statement If I may be permitted to say so, does it not look absurd, Sir? The relations and successors of the deceased normally would always know when the man is dead—more particularly those who inherit the property after death But how are these charitable institutions which have got money from the donor four or five months before his death, to know when the donor is going to die? It will lead to a great administrative difficulty and there is no use trying to get over this difficulty by saying that we shall not realise the tax from the Hindu University. That will be still more unfair. My hon. friend Mr. Kishen Chand has just given an illustration according to which person though he may not have inherited all the property may be called upon to pay duty on the total value of the property Would it not be unfair, Sir, to get out of this difficulty by suggesting that the Central Board of Revenue would not realise death duty on the gift from the Hindu University or any charitable institution? This is an aspect of the case, Sir, which must be seriously taken into consideration.

I would like to come to part (b) of the amendment of my hon friend Dr. Kunzru, "gifts made in consideration of marriage". May I again draw the attention of the House to the almost, if I may be permitted to use that word again, 'absurd' way in which sub-clause (2), of clause 9, has been drafted? Let us see this sub-clause It says.

> "The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate"

I draw particular attention to the words 'in the aggregate'. What are the implications of these three words

"in the aggregate"? Suppose a person has married off three daughters within a period of six months before his death and has married a son also. In the experience of all of us this happens, Sir, that when a person thinks that he is very near his death, he likes to marry off his daughters and his sons and wants this and that to be done so that the difficulties may not remain for his successors who will have to marry off the daughters and son. Now, a father would like to marry off his three daughters, and his son, and would also like to give some amount to his nephew for his education. According to the sub-clause, if he marries off his three daughters and his son and if the aggregate of all this is beyond Rs. 5,000, the extra sum will be taxed. I am not in favour of persons giving a huge dowry. But even if a person gives Rs. 3,000 or 2,000—which I do not think is much, for his three daughters, and marries his son also giving Rs. 2,000 to the daughter-in-law, it comes to Rs. 8,000; then Rs. 1,000 or Rs. 500 he spends as normal expenditure in these six months, all this will certainly go beyond Rs. 5,000.

MR. DEPUTY CHAIRMAN: The word 'marriage' is in singular and not in plural.

SHRI J. R. KAPOOR: If that is the intention of the hon. Finance Minister, Sir, then I have no quarrel with him. I am afraid, then, Sir, that the words 'in the aggregate' will have no meaning. I wish, Sir, that the interpretation that you were pleased to put on it is the one intended by Government also. If that is the intention of the Government, this may be suitably amended, and I would have no quarrel with it then. The Chair has thrown out a good suggestion. That being the case, I hope the Finance Minister will be well-disposed to suitably amend sub-clause 2 of clause 9

So also, we have part (c) of Pandit Kunzru's amendment. Except the limit of Rs. 5,000, I think that is a reasonable one. If you are so inclined, you might reduce the limit of Rs. 5,000 in the normal expenditure of the deceased but so far as the gift is concerned, there should be absolutely no restriction, whatsoever. I have nothing further to add because I would wish all Members who feel strongly on this—and everyone of us who is not in the Cabinet feels strongly on it—they may have an occasion to express their views strongly. I am sure that if the Finance Minister is convinced that such is the strong feeling in the House, he is sure to accept the amendment moved by Pandit Kunzru, or, failing it, the amendment moved by Shri Kishen Chand.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, although I am not moving an amendment, I want to invite the attention of the hon. the Finance Minister to certain points in clause 9 of the Bill. The first point is more or less a drafting point. I would invite the attention of the hon. Minister to page 5, line 22: "which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on the death". The words to which I want to draw the attention of the Minister are "two years or more". Suppose, Sir, we take a point of time two years before the death of the deceased, then the period between this point and the point of death will surely be covered by this. There is no doubt about this. But when you say "two years or more" then, obviously this point of time may recede to any extent in the past and that is what is meant by saying "two years or more". Any *mala fide* gift made at any time will thus be covered by this particular clause. In that case, I do not see any point in saying "two years or more". Why not say simply "any time before the death"? That will be perfectly all right.

Then the other point that I wish to make is the same as what several Members had been labouring just before me. And that is with regard to gift for public charitable purposes; I am referring to the proviso to clause 1. And here I entirely support the hon. Member, Pandit Kunzru. Sir, I

[Dr W S Barlingay]

do not want to repeat the arguments that have already been made in this House before me but I would give just one argument in support of the view expressed by Pandit Kunzru Sir, after all, what is the principle which lies behind this Bill? Suppose a person dies So far as his property is concerned, there are two main factors which are present in the creation of that property One is the person himself and the other is the society As soon as the person dies his property really and truthfully belongs to the society as a whole and therefore when you give away the property in public charity *i.e.*, when you "Give unto Caesar what belongs to or is Caesar's", there is no reason whatever why the State should come in between the donor and the charity and say 'we want something out of that' (*Interruption*) I know what Shri Reddy is talking about I am also one of those who believe that the State is one of the very important institutions which deserve everybody's charity I am perfectly conscious of this But then there is no justification whatever Sir, for that limitation of six months A person cannot know that he is dying six months hence He cannot know that six months prior to his actual death If a person knows that he is dying and then in contemplation of his death he gifts away his property in charity and thus wants to defraud the Government of its revenue, then certainly there would be some justification for not exempting such a gift from duty But in this case, Sir, the limitation is of six months and you know very well Sir, that a person cannot know six months prior to his death that he will be dying after that period

DR SHRIMATI SEETA PARMANAND Very often, one does

DR W S BARLINGAY No He does not Now, if a gift is made in contemplation of a person's death and in that case if the State comes in and says 'please pay something in charity to us" then there would be every justification for that proposition But when a gift is made not in contemplation of a person's death, then there is no justification whatever for the State to come in between the person and the charity

There is one other point which I want to raise in this connection and which has also been raised by Mr Kishen Chand Who is going to pay this amount of tax? Suppose a person dies and he gives most of his property to public charity If that public charitable institution is going to pay the taxes then the matter is entirely different But I do not think that that is the scheme of this Bill I suppose it will be the residuary person who will be required to pay all this tax And if that is so then this person will be mulcted by a very heavy tax indeed, and I do not think that that will be fair to anybody I therefore suggest, Sir and suggest it very strongly that gift meant for public charities should be entirely excluded from taxation This is all that I had to say in this connection

SHRI A S KHAN Mr Deputy Chairman I would like to draw the attention of the hon Minister to clause 9 of the Bill To make my point clear, I first of all wish to deal with clause 8 which has been passed Clause 8 says as follows

> "Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death"

This clause makes it quite clear that any gifts made in contemplation of death will not be valid

Now, coming to clause 9, we find that they have given two years' time That is to say, any gift made before two years if it is *bona fide*—of course that term '*bona fide*' will cause a lot of litigation later on—shall not be deemed to pass on the death Now my point is this I wanted to send an amendment but it was too late and therefore I could not send it in time My point is this that clause 8 contemplates a death by natural causes because nobody can possibly contemplate it through accident Suppose if

somebody makes a gift today to an institution or to a person and if he dies through an accident—say a motor accident or somebody murders him—within six months or within two years, as the case may be, then will Government hold that he was contemplating death like this? Therefore, Sir, equity and justice demands that Government should make it quite clear that the death contemplated in clauses 8 and 9 is death by natural causes and not through accident or through violence committed by somebody else. This is my point.

SHRI B. P. AGARWAL: Mr. Deputy Chairman, I would like to place my views before the hon. Finance Minister with regard to the amendment proposed by Dr. Kunzru and very ably supported by so many other hon. Members. The whole object of these provisions in clause 9, if I am able to understand it, is to provide safeguards against possible evasions so that undue advantage may not be taken under the guise of a gift. When it is provided, Sir, that gifts made for public charity should be excluded if they are made within six months, perhaps that takes into consideration the fact that evasion is likely to take place, and therefore this safeguard may be necessary. But when the gift is made for public charities, then where is the case of evasion? That I really do not follow. Charity has also been defined here as charity for public purposes. Therefore there is no reason to suppose that there is any possibility for evasion. But it appears to me, Sir, that in the anxiety to provide safeguards against evasion, provisions have been made so strict that charity may not be possible at all. Sir, you know that there are so many charities existing in the country and there are some very fine charities which have been made in the last days of donors. It is very easy to say that evasion will take place, but as it has been pointed out, Sir, nobody contemplates his death. Very often charities are made quite in good time and with the best of intentions, but if accidentally something happens, well under these clauses they will all be debarred. Now, my hon. friend, the Nawab of Chhattari has pointed out just now that if there is any charity which is made in contemplation of death or any gift made in contemplation of death, then that becomes a different question. If a charity is made today and the person dies through accident, if such action is to be taken *mala fide*, that step will be a very harsh one. Therefore, Sir, I would request the hon. the Finance Minister just to take up this matter more sympathetically. Very often charities are made at the last moment. When a man appears to be just on the verge of going, his friends and sympathisers go to him and advise him that at least in his last moments he should do something for the public good.

SHRI C. G. K. REDDY: To wash away the sins.

SHRI B. P. AGARWAL: You may not believe in that, but a vast number of Hindus believe in it. These ideas cannot be wiped away like that.

KHWAJA INAIT ULLAH: Not only Hindus.

SHRI B. P. AGARWAL: Yes, people of all religions. Therefore to deny this right to people will not be desirable.

Then, the other suggestion made by the amendment of Dr. Kunzru is with regard to gifts made to daughters for marriages. The other day, while speaking on the consideration of the Bill, Dr. Kunzru very ably pointed out that under the Hindu law the daughter does not get any share in the father's property. She does not inherit anything. When the Hindu Code Bill is passed, it may affect that aspect in due course, but at present the daughter is not entitled to any share in the father's property by her birth. The only thing which she gets is what the father chooses to give her during her marriage. Supposing the father is a millionaire and he wants to make gifts to his daughter—possibly she may go to a poor family—which will provide for her needs, why should you in

[Shri B. P. Agarwal.]

such cases restrict the amount to Rs. 5,000? In the circumstances in which Hindu society is constituted today, it will be very unfair to say that Rs. 5,000 is the amount which should be sufficient for a daughter's marriage and nothing more This completely ignores the existing price level and the existing circumstances

Another thing that I would like to suggest is that the main provisions of this Bill—unfortunately I was not present here at the time of consideration of the Bill—are not very much liked by the country in general

MR. DEPUTY CHAIRMAN: You cannot make any general remarks now. Confine yourself to this clause and the amendments.

SHRI B. P. AGARWAL: I am only speaking on the clause There are many persons here who want to support this Bill out of a sense of discipline because they belong to the Congress Party but if you ask the Members individually, I am sure many of them will say that many of the provisions of this Bill are of a serious nature.

KHWAJA INAIT ULLAH: Many, not only the rich people

SHRI B. P. AGARWAL: Therefore I would suggest that the hon. the Finance Minister should not take it that this Bill has received the support of all sections of the House. It is out of sense of discipline that many Members are agreeable to supporting this measure If the clauses are examined individually, you will find that there is wide divergence in views.

DR. SHRIMATI SEETA PARMANAND: Sir, I must say that I am not in sympathy with the amendment because I do not appreciate what has been stated as the reason for the amendment I think that we have already blamed the Government for having diluted the Estate Duty Bill to such an extent that we cannot blame them now for having made this provision. I personally think that on ethical grounds it is not right to water it down still further I feel that the six months' limit is more than adequate on ethical grounds. I am not able to understand how it can be said that people who are so ungenerous as not to part with their Rs. 8 lakhs out of Rs 10 lakhs up to six months before their death could be persuaded to part with it at the time of their death. I have not been able to understand that argument, nor am I able to understand how it would be necessary for the heirs who would be inheriting Rs. 2 lakhs to pay duty on Rs. 8 lakhs. If you turn to the clause on the payment of the duty namely, clause 53, "persons accountable, and their duties, and liabilities", it is laid down that the duty has to be paid jointly and severally if necessary. It is obvious that nobody would frame a law—no legislature would frame a law—where the duty on Rs. 8 lakhs will have to be paid by a person who would be getting only Rs. 2 lakhs as his share. It can never be done and no legislature will be guilty of such a piece of legislation.

Coming to the marriage gifts for daughters, I am not one of those who would like to prevent any girl from getting anything more than what she would ordinarily be getting, but I think that in framing a legislation, it is not right to have in view any microscopic minority. How many parents will be there who can afford it but who will not be able to give their daughters in their own life-time whatever they want to give, if it is more than Rs. 5,000? And how many parents are there in the country who, if they have more than one daughter, would be able to give more than Rs. 5,000 to every one of them? Just for safeguarding the interests of those girls who would be getting more than Rs. 5,000, just for safeguarding this microscopic minority, I do not think we should sacrifice the sound principles behind the Bill That, in my opinion, is very narrow-minded. Sir, you had said this Bill has nothing to do with the Hindu Code Bill too. I maintain

it has. It has to do with shares in the property. When in our society women get the right to property along with men on terms of equality, then this would not be necessary. So, from that point of view, for a short-term advantage, I do not think it would be right to do away with this clause.

With regard to the time factor for making gifts before death, it was said that nobody knows when he is going to die. But many who suffer from long illnesses know that they are not going to live beyond four or five months. When this time factor is introduced to guard the interests of the State, I do not see why people should object to it. It has been said that charity is for the public good. When the State collects the tax, does it consume the whole thing for its own enjoyment? When the State is a Welfare State and the Government is doing everything for the people, why should there be any quarrel? I said that I am not entirely in sympathy with this amendment, but I would have been if it has been clearly proved that the gift.....

MR. DEPUTY CHAIRMAN: You need not say anything about what has not been said.

DR. SHRIMATI SEETA PARMANAND: I would have supported the amendment irrespective of whether the gift was made two years in advance or a few days earlier or even on death-bed, if the amount gifted did not exactly enable the donor to evade the tax by being subject to a particular higher rate. I do not like to differ from my esteemed friend on the motives, which are good, and I would have liked to support him; but I do feel in this particular instance not much would be gained by changing this present clause as it stands, because the six months' limit I think, is really based on ethical grounds. So I am not in favour of this amendment.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, Sir, I strongly support the amendment which has been so ably moved by my revered friend hon. Dr. Kunzru. He has so ably put his case that very little need be said by me in favour of it now. I have only to add something further in the proviso to section 9 namely the words 'religious also'. The effect of the inclusion of these words will be gifts made not only for public charitable purposes but also gifts made for public religious purposes will be exempted from duty. Dr. Kunzru has told the House that in the American law, as it stood until 1947, the words 'religious gifts' existed and I see no reason why religious gifts also, which are made within the prescribed time under the existing sub-clause, or, if that clause is omitted, at any time whatever, should not be allowed.

MR. DEPUTY CHAIRMAN: I think the hon. Minister made it very clear in his speech. It includes gifts for religious purposes provided it is not a private thing.

PANDIT S. S. N. TANKHA: Personally I think the Bill as it stands will debar all those gifts whatever assurance the hon. Minister may give.

MR. DEPUTY CHAIRMAN: It comes under the definition 'public charitable purposes'.

PANDIT S. S. N. TANKHA: How can it? Under sub-clause (17) of section 2 the definition is that 'public charitable purpose' includes relief of the poor, education etc. The word 'education' here includes religious education also—I concede that. If a school is opened for imparting religious instruction, I admit that charity given for it will be exempted from duty but.....

MR. DEPUTY CHAIRMAN: Any other object of general public utility.....

PANDIT S. S. N. TANKHA: The definition provided under sub-clause (17) of clause 2 further provides for "And the advancement of any other object of general public utility within the territory of India". It is difficult to say whether or not the words 'for general public utility' will include religious gifts, for instance, those made for

[Pandit S. S. N. Tankha.]

building temples etc. The question is whether such gifts will be said to be for general public utility. My own view is that they will not be termed as being for general public utility How can you say for instance, that if I dedicate a sum of money for making of a temple, that it will be classed as being for general public utility? So whatever assurances the hon. Minister may give, I submit that unless clause 9 is altered to include the words 'public religious purposes also' I am afraid such gifts will certainly be debarred. All religious gifts, for whatever object they may be made, except for education, will not fall under the present sub-clause (17) of clause 2. Some of my hon. friends have said that it will be a good thing if religion is taught and Vedas are taught. I think that objection is not barred because according to me it falls under the existing definition but other gifts made for religious objects will certainly not be covered, unless the existing clause is altered.....

MR. DEPUTY CHAIRMAN: This point had already been touched.

PANDIT S. S. N. TANKHA: Then Sir, in sub-clause (2) I find the words are:

> "The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate."

My first difficulty with regard to this sub-section is a proper understanding of this sub-section namely as to what are the gifts contemplated here as being gifts made in consideration of marriage. According to the legal phraseology the words 'in consideration of marriage' means only such sum which is to be given either to the husband for entering into marriage with the bride or gifts made to the bridegroom's family members in consideration of the contemplated marriage but it cannot include any sums which may have to be spent over the marriage of the daughter. If the interpretation of this sub-clause ....

SHRI H. N. KUNZRU: That is dealt with in clause 33

PANDIT S. S. N. TANKHA: If by the words 'in consideration of marriage' it is meant dowry, or such stipulated amount as is agreed to be paid between the parties for entering into that contract of marriage, then I submit that this sum of Rs. 5,000 is quite a reasonable figure, because it should be our endeavour not only to cut down this amount of dowry, but to abolish the system of dowry altogether as a social obligation, as far as it is practicable. But if these words are supposed to include the entire expenses of marriage of the daughter, then I submit that this amount is too little because in all marriages that take place among the middle class today, the expenses come to nothing less than Rs. 10,000, and they even go up to Rs. 20,000 if the jewellery and clothes of the bride are included. Therefore it seems to me to be absurd to mention here a sum of Rs. 5,000 only in the aggregate to be allowed to be exempted under the Bill because no middle class marriage can possibly be performed within this small amount of Rs. 5,000.

Then, as regards the amendment of my friend Mr. Kapoor when he suggests that the word 'stipulation' be added to the word 'charity' in the sub-section.....

MR. DEPUTY CHAIRMAN: There is no amendment.

PANDIT S. S. N. TANKHA: It is not an amendment exactly but it is his suggestion. About that, I would submit that I am not in agreement with it, because the inclusion of those words would restrict the donation to the stipulated charities only and we all know that charities depend upon the whim of the donor. It is not necessary that he or she should agree upon giving any sum to any particular charity

which may be named by the Government as he or she may like a charity to be named after his or her daughter or in memory of his or her father, wife or husband or anyone else in-order to perpetuate their name. He or she may like a particular charity to be made in a particular way. Therefore there is no point in restricting the charities to stipulated charities only.

As regards the period of six months, I have already made my submission during the first reading of the Bill and I have submitted that the restriction imposed is not proper as it would restrict and hamper the giving of charities by the public

Next Sir, the Nawab of Chhattary has raised some objection to clause 8 and he has some doubts and fears as to which gifts will be termed as gifts *mortis causa* ....

MR. DEPUTY CHAIRMAN: There is no amendment.

PANDIT S. S. N. TANKHA: He has expressed his fears and desired to know what these words connote.

He had some difficulty on the subject and so I would like to invite his attention to the explanation which is given under clause 8 which says:

> "In this section, the expression 'gift' made in contemplation of death, has the same meaning as in section 191 of the Indian Succession Act, 1925."

And, Sir, section 191 gives certain cases of gifts which will be covered under the section as also the cases which will not be so covered. I would like to invite attention to the two illustrations given under the section, namely the first and the last illustrations. The first illustration is:

A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch,

a bank note,

a bond granted by C to A,

a promissory note,

a bill of exchange, and

certain mortgage-deeds.

A dies of illness during which he delivered these articles and B is entitled to all these articles.

The last illustration namely the third under the section is as follows:

A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcles. B and C are not entitled to the contents ot the parcels.

This will show which cases will be covered and which will not be covered by section 8.

Regarding criticism of the hon. Member—Shrimati Dr. Seeta Parmanand—I can only say, if I may be permitted to say so, that she has not properly understood human feelings and human psychology so far and.....

DR. SHRIMATI SEETA PARMANAND: We are trying to change it, or rather, raise it—human psychology.

PANDIT S. S. N. TANKHA: It is within the experience of everyone that all the softer sentiments and feelings that are embedded in man come to surface when he is on his death-bed and it is seldom a fact that his instincts for giving charity comes into play at a much earlier time before his death. Therefore, Sir, the hon. Members who have suggested that this stipulation of six months' period should be removed from this sub-section are perfectly justified in asking for it and making that suggestion and I wholeheartedly endorse it.

SHRI ONKAR NATH (Delhi):

श्री ओंकार नाथ (दिल्ली) : उपाध्यक्ष महोदय, मैं इन संशोधनों का जो कि हमारे

[Shri Onkar Nath]

माननीय सदस्य डा० कुजरू और श्री किशन चन्द जी ने पेश किये है, हृदय से स्वागत और समर्थन करता हू । मुझे दुःख है कि हमारे माननीय अर्थ मत्री जी ने इसके महत्व को नही समझा है। अगर वे अब भी यह अनभव करेगे कि इस सशोधन को न मानने से देश को हानि पहुचेगी, तो मुझे विश्वास है कि उनकी देशभक्ति पर कि वे इस पर पुनर्विचार करेगे । आज दरिद्रनारायण की सेवा की उस उच्च भावना को, जिसे राष्ट्रपिता महात्मा गाधी ने हमे बताया था और जिनके सिद्धान्त के अनुसार हर धनी आदमी को अपने को धन का ट्रस्टी समझ कर दरिद्र-नारायण की सेवा के लिये उसका अधिक से अधिक उपयोग करना चाहिये हम निरादर कर रहे है । आज उसी भावना को लेकर, हमारे पूज्य विनोबा जी देश मे पैदल यात्रा करके गाधी जी के इस सन्देश को, कही भूदान मागते हुए, कही सम्पत्ति दान मागते हुए, कही श्रम दान मागते हुए और कही कूप दान के लिये घर घर पहुचा रहे है। जितने सामाजिक वर्कर (worker) और सस्थाये है उन्हे मालूम है कि आज देश के कामो के लिये मागने मे कितनी दिक्कते है। इस सशोधन को अस्वीकार करने से ऐसे सामाजिक कार्यों मे भी बडी हानि व अडचने पैदा होगी जिनसे सरकारी कामो मे मदद पहुचती है । हमे तो खुशी होती यदि गवर्नमेट कानून द्वारा इन बातो को इनकरेज (प्रोत्साहित) करने के लिये कोई ठोस कदम उठाती, और गाधी जी की भावनाओ को प्रोत्साहित करती । सन्त विनोबा जी के गरीब अमीर का भेद मिटाने के शान्तिमय क्रान्तिकारी आन्दोलन मे हाथ बटाती ।

मुझे बहुत दुःख लगा जब मैंने अपनी माननीया बहिन, श्रीमती सीता परमानन्द, को सशोधन के विरुद्ध बोलते हुए सुना । शायद उन्हे यह नही मालूम कि आज दिल्ली शहर और हिन्दुस्तान के शहरो मे जहा धनी लोग रहते है कितने स्कूल, कालिज, अस्पताल वगैरा धर्मार्थ दानो से बने है और उन्ही पर चल रहे है। सरकारी अस्पताल, स्कूल कालिज आदि तो कोई एक आध ही होते है बाकी सब दान से बनते है उनमे भी ज्यादातर तो आपको ऐसे ही मिलेगे जो कि मरने के वक्त दान किये गये द्रव्य से बनाये गये है । हमारे देश की उच्च भावना क्या है? जब कोई आदमी अपनेको मरणासन्न पाता है तो वह अधिक से अधिक दान पुण्य कर जाने की इच्छा करता है और दान करने से आशा करता है कि उसे सद्गति प्राप्त होगी, उसका परलोक सुखी होगा । जो लोग इस प्रथा से अपरिचित है वे हमारे देश की सस्कृति को नही समझते है । मै कहता हू कि यह हमारे देश मे केवल हिन्दुओ मे ही भावना नही है बल्कि हर धर्म मे है । मनुष्य मात्र की यह प्रकृति ही है कि जब आदमी मरने लगता है तो उसे दान करने की प्रेरणा होती है । कजूस से कजूस आदमी तक उस समय दानी बन जाता है। मुझे मालूम है कि मेरी माननीया बहन एक कालिज की प्रिसिपल रह चुकी है, और यह कि उस कालिज के मन्त्री जी जब कभी उन्हे मालूम होता था कि शहर का कोई धनी मानी आदमी मृत्यु शैया पर है तो वह अपनी सस्था के लिये दान मागने पहुच जाते थे और इस तरह से उन्होने लाखो रुपया सस्था को दिलाया। मै आपको यह बता दू कि दिल्ली मे कई स्कूल, कालिज ऐसे दान की सम्पत्ति से खोले गये है। एक साहब ने मरने से कुछ दिन पहले ११ लाख रुपये का दान किया जिससे आज एक हाई स्कूल चल रहा है और एक अस्पताल बनने वाला है। अभी पिछले महीने एक सज्जन ने मरने से सिर्फ ३-४ दिन पूर्व ३ लाख रुपये टी० बी०

अस्पताल आदि के लिये दान कर के अपने दिल की रजिस्ट्री कराई । ऐसी कई एक मिसाले मैं आपको दे सकता हूं । आज की स्थिति मे तो दान को और प्रोत्साहन देना है, और मै समझता हू कि यदि गवर्नमेंट चैरिटी (charity) पर टैक्स लेगी, तो इससे देश को बडा नुक्सान होगा । हम देखते है कि आज देश मे ७० फीसदी बिना पढे लिखे आदमी है । ८० फीसदी के लिये मैडीकल एड पूरी तरह नहीं है । अस्पताल और शिक्षा सस्थाये अधिकाश दान द्वारा चलाई गई है, केवल सरकारी तौर पर यह काम पूरा नही हो सकता ।

प्रत्येक टैक्स का मतलब सरकारी व देश के कार्यो के लिये धन एकत्रित करना तो होता ही है पर इस बिल का अभिप्राय शनैः शनैः देश मे आर्थिक समानता लाना भी बनाया गया है । परन्तु आज ८३ देशो के अन्दर इस्टेट ड्यूटी वर्षों से लागू है, वहा कही भी ऐसी स्थिति नही है, कि गरीब अमीर बराबर है, या जहा किसी तरह की असमानता दूर हो गई हो । मैं कहता हू कि आप जायदाद को ही क्यो न खत्म करे, सम्पत्ति का बराबर विभाजन क्यो न करे जिससे सब लोग समान स्तर पर लाये जाये, गरीब अमीर एक कर दिये जाये, जिस से इस बिल को लाने की जरूरत ही न हो । अगर समाज मे इक्वेलिटी (equality) हो जाये तो फिर इस बिल की जरूरत क्या रहे । वैसे तो दान की प्रथा कोई आदर्श बात नही है, यह एक पूजीवादी रिएक्शनरी (reactionary) समाज की चीज है । समाजवादी व साम्यवादी समाज मे दान मागना और दान देना गुनाह होगा । परन्तु आज की हालत मे तो हमारे देश को इसकी जरूरत है कि लोग अपना धन किसी प्रकार भी देश की सेवा और उन्नति मे लगाये और खुशी से लगाये जबरदस्ती नही, जैसे की—सरदार लोग मुझे माफ करेगे—सिखो मे एक तबका है जिसे निहंग कहते है जिसे अगर एक रुपया दान दे तो वह कहते है कि हम दान नही लेते है । हम उसे आपसे छीन कर जबरदस्ती ले लेगे "यहा रख दो सरदार लूट कर लेगा भीख नही" । मेरे कहने का मतलब यह है कि जब तक आप ऐसी क्रान्तिकारी चीज नही लाते है कि जिसमे कोई किसी का कर्जदार न रहे, कोई किसी को किरायेदार न रहे, और कोई बिना रोजगार के न रहे और भूखा न रहे और लोगो मे समानता पैदा हो, जब कि इस किस्म को बिल को लाने का कोई सवाल नही पैदा होगा, जब तक ऐसी व्यवस्था नही होती तब तक आप यही कोशिश कीजिये कि कोई टैक्स कभी भी दिये हुए दान मे से न लिया जाये । चाहे वह मरते मरते ही उसके घर वालो ने हाथ लगवा कर दिला दिया हो जैसा कि हमारे यहा आम दस्तूर है ।

जब आदमी का मरने का वक्त आता है, जब उसका सूर्य अस्त होने लगता है तो उसकी धार्मिक भावना उज्ज्वल हो जाती है । मुसलमान हो या हिन्दू सब यह कहते है कि नामालूम मरने के बाद क्या होगा । सलिये अपने जीवन रहते दान कर जाये परन्तु मरने की कोई तिथि निश्चित नहीं होती । न मालूम कौन आदमी किस क्षण मृत्यु को प्राप्त हो जाये । हार्ट फेल, रेल दुर्घटना या हवाई दुर्घटना हो जाये । बहुत से मरणासन्न रोगी ऐसे भी होते है जो कई साल तक रोग पीडित रहते है जैसे टी० बी० के मरीज । तो इस तरह की बाते कहना कि ६ महीने पहले कोई आदमी जनकार्य के लिये दान का विधान कर दे यह असम्भव है जब कि मृत्यु के लिये कोई तारीख निश्चित नही की जा सकती, उसका कोई ६ मास छोड ६ पल का भी नोटिस नही मिलता । हा, फाइनेंस मिनिस्टर साहब

[Shri Onkar Nath.]

मरने की डेट फिक्स करा दिया करें तो यह सवाल हल हो सकता है। अधिकांश लोग मरते वक्त या मरने से पहले आखिरी दम तक दान करते है। मैं आपको बीसयों मिसाल बता सकता हूं कि ज्यादातर दान वह हैं जो मरते वक्त किये गये है और जिनसे बड़ी बड़ी संस्थायें बनी हुई है। मुझे दुःख होता है कि बार बार हमारे प्रधान मंत्री और राज्यों के मंत्री जब इस बात को सपोर्ट कर रहे है कि लोगों को ज्यादा से ज्यादा दान करना चाहिये, और उसी उद्देश्य की पूर्त्ति के लिये आचार्य विनोबा भावे के आन्दोलनों को बढ़ाने और सफलता प्रदान करने के लिये रात दिन अपील करते है, तो फिर इसी भावना का इस बिल द्वारा क्योंकर निरादर हो रहा है, आज क्यों विनोबा जी के इस आन्दोलन को सक्रिय रूप दिया जा रहा है कि जिसके पास जमीन हो या धन हो वह उसका कम से कम छटा हिस्सा देवे। इसी भावना को हमारे लोकप्रिय प्रधान मंत्री भारत सेवक समाज, कम्यूनिटी प्राजैक्ट वगैरा में देशवासियो की सहायता व सहयोग मांग कर जाग्रित कर रहे हैं, इसी के जरिये देश में आर्थिक समानता आ सकती है। इन कानूनों और टैक्सो के जरिये बिना हिंसा के न किसी देश में आर्थिक क्रान्ति आई और न आ सकती है। पिछले बजट के समय जब अर्थ मंत्री जी ने इनकमटैक्स मे दान के लिये कटौती के नियम म संशोधन करके उसे घटा कर १० परसेंट के बजाय ५ परसेंट कर दिया था और २।। लाख की मियाद को १ लाख किया था मझे जितना खेद आज हो रहा है एसा ही उस समय आज से छः महीने पहले मैंने अनुभव किया था। वह भी समाज सेवा के कार्य में मदद के प्रति एक किस्म का आघात था।

इसलिये हमारे यहां मरते वक्त के दान पर जो टैक्स लगाया जाता है मैं समझता हूं वह उन तमाम भावनाओ का विरोध करना है जो महात्मा गांधी समय समय पर हमें बतलाते रहे। यह जो छः महीने की अवधि रखी गई है यह हमारे देश के रिवाज और परम्परा के विपरीत कार्य किया गया है। इस परिषद् में लोगों को शायद मालूम है, श्रीमन्, कि चीन मे यह रिवाज है कि जब कोई चीनी मरता है तो उसके कोफिन के अन्दर ऊंसी नोट रख दिये जाते है जिसके अन्दर यह भावना होती है कि अगले जन्म मे वह उसके काम मे आयेंगे। हर एक देश के अपने अपने रिवाज होते है हर एक के अपने अपने तरीके होते है। इन शब्दों के साथ मैं पुनः संशोधन का समर्थन करता हू।

[For English translation, *see* Appendix V, Annexure No. 109.]

MR. DEPUTY CHAIRMAN: The Finance Minister.

SHRI RAJAGOPAL NAIDU: I want to say a few words, Sir.

MR. DEPUTY CHAIRMAN. I have called upon the Minister.

SHRI RAJAGOPAL NAIDU: I am sorry, Sir, I have been getting up a number of times.

MR. DEPUTY CHAIRMAN: Well, it has been discussed sufficiently long

SHRI M. C. SHAH: Mr. Deputy Chairman, there are two or three points urged by the hon. Members First, Mr. Reddy wants the provision to be made rather stricter. He wants to exclude these gifts to the relatives. I am afraid we will be going too far if we accept that. It may be that there are occasions when attempts are made to evade tax but, we have tried to provide against it as far as is possible; we have provided that not only the possession is to be handed over but enjoyment also is to be

handed over to the entire exclusion of the donor and, in the conditions as explained by the Finance Minister in his reply, it becomes rather very difficult to have a bogus gift or bogus trust or a bogus settlement made. Still, if we find from experience that there are people who try to do that we will see that those are removed, if necessary by an amendment later on but, just now, in the United Kingdom Act also which we have followed in so many sections, those words do not appear and, therefore, it will not be possible for the Government to accept the amendment restricting the benefits that are given in clause 9.

Now, Sir, I would take up the point of Mr. Naidu. He is afraid because of the word "religious" not being there and he feels that for religious purposes donations cannot be given. It has been made clear by the Finance Minister that if those activities are of public nature then there is no difficulty about it. There are so many rulings but I will read only one where it has been said that the charity, in the legal sense, comprises four principal divisions: trusts for removing poverty; trusts for the advancement of education; trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of the preceding heads.

SHRI J. R. KAPOOR: Where is that from?

SHRI M. C. SHAH: It is an English case; those are the principles that have been followed by our High Courts. So, I submit, Sir, that the amendment that has been moved by my hon. friend, Mr. Inait Ullah, has no relevance to the subject. The word is already included and, therefore, that should not be accepted. It was also made clear when the amendment was moved to clause 2, definition of public charitable purposes. So, I am sure that my hon. friend will be satisfied with this assurance and that he will not press his amendment.

SHRI J. R. KAPOOR: The hon. the Deputy Finance Minister is making a very big commitment which is against the phraseology used in our Constitution. May I, Sir, just draw his attention to article 26 of the Constitution in the Fundamental Rights chapter.

SHRI M. C. SHAH: I know, but it is not necessary.

SHRI J. R. KAPOOR: Article 26 specifies that religious and charitable purposes are entirely two different things. We have, in this article, "subject to public order, morality and health, every religious denomination or any section thereof"—a section also is included—"shall have the right—

> (a) to establish and maintain institutions for religious and charitable purposes; * * *"

So, obviously, according to our Constitution, 'charitable purpose' does not include 'religious purpose'; these two are entirely different things. The hon. the Deputy Finance Minister is making a very big commitment which will not be borne out by the interpretation in law courts.

SHRI M. C. SHAH: Gifts made to those religious institutions which are meant for the public will come under the public charitable purposes defined earlier; there is no doubt about it.

KHWAJA INAIT ULLAH: Public or special section?

SHRI M. C. SHAH: As the Finance Minister has explained, the general public of the Hindu community, the general public of the Muslim community, etc., these will certainly come within its purview.

KHWAJA INAIT ULLAH: If these will come, then that is all right.

SHRI B. B. SHARMA: Sir, is it the position that assurances of the Finance Minister which are not incorporated in the law will be accepted by the courts?

SHRI M. C. SHAH: I have just read from the ruling.

SHRI B. B. SHARMA: But that ruling is not of a High Court of this country.

SHRI M. C. SHAH: That ruling has been followed by our High Courts.

KHWAJA INAIT ULLAH: Were these rulings given before our new Constitution was enacted or afterwards?

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order. Let him proceed.

KHWAJA INAIT ULLAH: This is a matter to be satisfied about, Sir. Were these rulings given before the Constitution was framed or afterwards, because in our Constitution we have defined charitable purposes and religious purposes separately. If these rulings were given before that, then our Constitution differs from the rulings but if it is after the Constitution was framed, I am satisfied that charitable purposes can come under this clause. That is what I want to know. As the hon. Minister says that it will, I am satisfied. I wish to bring it within the purview of this clause but my hon. friend just now asked whether the meaning just now explained by the hon. Minister in the House will be accepted by our courts or not. If these are not accepted then I would request the hon. Minister to make this point clear in the law itself so that there may not be trouble in the future and so that our courts may not understand the meaning of this clause different from the meaning which is being explained here by the hon. Minister.

SHRI M. C. SHAH: Let us not anticipate the rulings of our courts. Even after the Bill is passed if there is any difficulty there is time enough to look into the matter. Just now the material before us justifies us to interpret it in the way in which we are interpreting it.

The amendment of my hon. friend Dr. Kunzru suggests that there should be no time limit for public charitable purposes and many of the other Members who followed him have also suggested that the fixing of a time limit will be driving out public charities and therefore it is not in the interests of public charities to have this time limit of six months inserted in the clause. As I said, at the same time it has been suggested that there should be no time limit.

I may just draw the attention of the hon. Member that in 1946 when this Bill was drafted, the time limit for public charitable purposes was one year. Later on that time limit has been reduced to six months. In the U.K. the time limit is even to-day one year. But considering all the aspects we considered that six months' time limit would be quite sufficient here. The Select Committee also accepted six months as the time limit. I do not accept the argument that by adopting this six months' time limit public charities will be drying up.

SHRI H. N. KUNZRU: Please do not put in my mouth a statement that I did not make. I did not say that the sources of all charity would dry up if this provision in the Bill were retained. What I said was that it was desirable for the Government to encourage charities for public purposes, particularly, for educational purposes as it was very difficult these days to pursuade private donors to give money for such purposes.

SHRI M. C. SHAH: I am sorry if I have misunderstood my hon. friend but the trend of opinion of some of the speakers who spoke was that by introducing this clause private charities would be drying up almost. On the contrary how is it better to allow people to wait to make their charities till they die? It may be that they have died before making the charities they thought of doing. This time limit will accelerate the pace of charities. People will know that there is a provision that if charities are given within six months before death then there is the possibility of the estate duty being paid by his successors and therefore those who want to make

charities will rather like to have their desires fulfilled earlier. It may be that there may be a case here or there where after making a certain donation to a certain charitable institution the donor may die. The illustration quoted by my hon. friend Mr. Kishen Chand of a man having properties worth Rs. ten lakhs giving away Rs. eight lakhs within six months before his death and the remaining Rs. two lakhs being liable to be paid as estate duty, I think, is a very very extreme case. I have some experience at least for more than 33 years in the public affairs. I have seen so many people giving big sums as donations. As a matter of fact I have seen that those persons who donated big sums to big institutions did donate long before their death and they always liked to see the fruits of their donations during their lifetime. I feel that it may be possible that there might be a case here or there where donations were made and the donor immediately died. There can hardly be a case as the one cited by Mr. Kishen Chand where an entire property or nearly 4/5ths of the property were donated and the man immediately died. If a good sum is donated naturally that man must be worth much more and his successors should not mind paying that additional sum to the Government which sum will go for the welfare of nearly thirty-six crores of people in India. Some Members have urged that for social welfare all these donations should be encouraged. I concede their point that we should encourage such donations but by putting a limit of six months, I do not think, there is going to be any retarding action on the part of the Government. As a matter of fact Government have already provided four crores of rupees for social welfare in the Plan. That amount has been provided not by the States but by the Central Government. It cannot be the intention of the Central Government to just retard the charitable motives or charitable actions of individuals. We should see that there is no evasion of estate duty. As was said by the Finance Minister in his reply, even at the time when a dying man's hands may be shaking, when he may not be in a rather fit condition to know what he is doing, the people around him will get all these gifts presumably for charitable purposes but they may be bogus ones. As a matter of fact nothing unusual is put in this clause. As a matter of fact we have rather brought it down to six months though originally it was one year and I think that that is good enough.

SHRI R. U. AGNIBHOJ (Madhya Pradesh): Is the hon. Minister aware of the fact that generally in the whole country and in the world over people give charity just at the last moment when they are about to die and not within six months or one year or five years before their death?

SHRI M. C. SHAH: My experience from Gujerat is not of that type. I know that at death-bed people can give a Rs. 100 to the *Pinjrapole*, a Rs. 200 to the *Goshala* or a Rs. 300 to the *Anathalaya*. Whenever big donations have been given my experience has all through been that those donations are given during the lifetime of the donors concerned. They make the donations when they are prosperous and when they have acquired so much property. They want to give big donations to big institutions and they want to see the fruits of those donations if possible during their lifetime itself. They want to see how the institutions prosper. They go on giving donations that way.

SHRI GOVINDA REDDY (Mysore): In Gujerat it is different. It is the case there that the more they give for charitable purposes the more they will get.

SHRI M. C. SHAH: Hon. Members of the House must remember that this is a Bill in which we have to see whether the ordinary middle-class people are affected. As a matter of fact the middle-class families will not be in a position to give much towards charity. For them also we have already provided, namely Rs. 2,500, and

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in such cases we have not put down any limit of time. At death-bed a man can give up to Rs. 2,500 for any good charitable institution or charitable objects and if those who possess huge fortunes prefer to give gifts to charitable institutions at death-bed, by this Bill that is also not prevented. The only thing that this Bill places on the statute is that on those big charities some estate duty will have to be paid to the Central Government which will use all these sums collected in giving to the States concerned, who will in turn spend all those for the benefit of the community at large. I think these people should not grudge to pay the small sums of estate duty. They can choose to give for charitable purposes at death-bed at any time and let their successors who get the huge fortunes pay a small slice out of that fortune that they may inherit to the Government of India. I think that would be quite proper in the circumstances. (*Interruptions.*)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI R. U. AGNIBHOJ: When Hari Singh Gour made a gift of two crores of rupees there was no question of six months or one year or five years.

SHRI M. C. SHAH: When did he die?

DR. SHRIMATI SEETA PARMANAND: Maybe two or three years after the gift.

SHRI M. C. SHAH: Is it within six months? Rather, that strengthens my argument. (*Interruptions.*)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI M. C. SHAH: I say that those people who have got huge fortunes would always prefer to give donations during their lifetime, that is, when they do not expect to die, and they would like to see the fruits of their donations during their lifetime. They would rather like to take an interest in those institutions and they will just give further donations in order to strengthen those institutions. They are all protected by this. I say that instead of being sentimental we should be realistic and we should see whether by this section we are just retarding the progress of charities. I feel that rather the pace of charities will be accelerated. People who are charity-minded cannot be charity-minded just on the death-bed. If they are really charity-minded, they will immediately begin to give donations instead of paying estate duty to the Government and they are all welcome to do so.

DR. RADHA KUMUD MOOKERJI (Nominated): Is it possible to govern this world from the other world? (*Interruptions.*)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI M. C. SHAH: So, Sir, I feel, looking to all the circumstances, to the advantages and disadvantages, that this is a moderate time limit—these six months—and I am sorry I cannot accept the amendment of my hon. friend Dr. Kunzru.

Now, there is another part of Dr. Kunzru's amendment and that is with regard to the gifts made in consideration of marriages. There too if my hon. friend would just look at the original Bill as it was introduced in the House of the People, he would see that this sub-clause was not there. As a matter of fact, after the Select Committee reported to the House, we looked into the matter and we thought that there might be some hardship in the case of gifts in consideration of marriage during the course of these two years. Therefore we thought it better to make this provision. And then consider what a middle-class family can do. Can a middle-class family afford to pay more than Rs. 5,000 in consideration of marriage? We have to consider that aspect while considering this question. We considered that Rs. 5,000 was quite reasonable. As a matter of fact, a person with a property of one lakh or so will not be in a position to give away Rs.

25,000 to his daughter as a gift at the time of marriage. If he wants to give he can give before two years. He can give away whatever has been provided for. We are also not accepting the suggestion of my friend that we should make this clause strict in favour of relatives. Therefore this sum of Rs. 5,000 is quite reasonable for a middle-class family. And then we have provided so many concessions in clause 33. We have made exemptions up to Rs. 5,000 for each marriage after the death of the deceased. If you take into account all these concessions, it will come to more than Rs. 19,000 or so. In view of all this, I do not think that it will be fair for the Government to accept any of the alterations in the concessions already granted. Therefore I am afraid that it is not possible for the Government to accept that amendment of my hon. friend Dr. Kunzru.

1 P.M.

Then there was a question raised by Mr. Kapoor. Suppose a sum is given to the Hindu University and if a person who donated it dies, what will happen? Will the Hindu University have to pay or the estate of the deceased? As a matter of fact, the responsibility.....

SHRI J. R. KAPOOR: I have no doubt on that matter.

SHRI M. C. SHAH: But you just said that the liability is joint and several. As a matter of fact, in practice we always go to the successors who have inherited, but if we fail to get from them, then certainly we will have to go to the University and that too within six months. Whenever a gift is made and if an institution gets that gift, in case the donor dies within six months and if the estate of the donor is not sufficient to pay the duty.....

SHRI J. R. KAPOOR: Then you will pick and choose between the various persons liable?

SHRI M. C. SHAH: No, no, Sir. Ordinarily always in administrative practice it is the estate of the deceased that has to pay the estate duty but if.....

SHRI J. R. KAPOOR: And the amount given in charity is also property passing on death?

SHRI M. C. SHAH: Certainly, if it is within six months. There is no doubt about it. It is very clear. If it is within six months, then it forms part of the estate and on that part of the estate also duty is leviable. But after all it will be a small fraction. Why should a man having so much property grudge to pay such a fraction to the Central Government, I do not understand. How can he refuse to pay in the name of the masses for whose benefit this money will go? Why should he grudge that much, if he is in a position to pay, when he has actually succeeded to the estate?

SHRI J. R. KAPOOR: I am afraid, Sir, my point has not been caught by the hon. the Deputy Minister. I do not grudge paying estate duty to the Government but I do grudge a charitable institution being deprived of a part of the property which has been given to it in donation. It is that which I grudge.

SHRI M. C. SHAH: I see the point. Why could not the money coming to the University safely remain in its hands? Why should it be taxed to the extent of the duty leviable on that part of the property which the donor gave to the University? In connection with the time limit I have already tried to explain that we cannot accept the position. I say if there is a small slice to be given out of that, what is the harm, I do not understand. After all, the money is not going to the personal gain of anybody. It is going to the Central Government for the benefit of nearly 36 crores of people. And how many such cases will be there, that has to be seen.

So, Sir, those are the two main amendments proposed—one with regard to the time limit of six months and the other with regard to gifts made in

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consideration of marriage. Mr. Kishen Chand's amendment also comes to the same thing. I submit, Sir, that these amendments be not accepted by the House and the clause as moved by the Government be accepted.

MR. DEPUTY CHAIRMAN: Do you press your amendment?

SHRI H. N. KUNZRU: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 5, lines 24 and 25 be deleted."

The motion was negatived.

SHRI J. S. BISHT: Sir, I would like to withdraw amendment No. 4.

The amendment was, by leave, withdrawn.

MR. KISHEN CHAND: Sir, I desire to withdraw my amendment No. 5.

The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: Dr. Kunzru, do you press the amendment?

SHRI H. N. KUNZRU: Yes, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 5, for lines 26 to 29, the following be substituted, namely:—

'(2) the provisions of sub-section (1) shall not apply to—

(a) gifts made for public charitable purposes;

(b) gifts made in consideration of marriage; and

(c) gifts which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding five thousand rupees in the aggregate.'"

The motion was negatived.

KHWAJA INAIT ULLAH: Sir, ...

MR. DEPUTY CHAIRMAN: No speech at this stage, Mr. Inait Ullah. You will have to say whether you press the amendment or withdraw it.

KHWAJA INAIT ULLAH: I will not say more than one sentence. Though the words of my amendment are not accepted, I am thankful that the sense of my amendment is accepted. Now, let us see and pray to God that the officials accept the meanings and explanations to this clause which are given by our hon. Minister. So I do not propose to press the amendment.

The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 10. There is one amendment by Mr. Nausher Ali. He is not here.

Clause 10 was added to the Bill.

Clause 11 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 12. There are three amendments to the clause. Mr. Nausher Ali is not here.

Clause 12 was added to the Bill.

Clauses 13 to 20 were added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 21. There are two amendments 7 and 8. Mr. Maheswar Prasad Narain Sinha. He is not here. No. 7 is disallowed. Amendment No. 8.

SHRI S. N. MAZUMDAR: Sir, I move:

"That at page 15, after line 3, the following be added, namely:—

'Provided that the assets situated or located in India of the

company or the corporation incorporated outside India shall for the purposes of the Act and this section be taken as situated or located in India, namely, within the territories'."

Sir, the amendment which I have tabled is a very important one, as I have indicated in my speech on the first reading of the Bill. There, I have already mentioned the importance of this very thing that it should be the purpose of this measure to see that foreign concerns who have their business here have no loopholes left for evading payment of the duty. It is true that the hon. the Finance Minister will reply that he does not intend to exempt them. If that is his intention, there is no reason why he should not accept my amendment which only makes it clear and definite that no loopholes are left for foreign concerns for avoiding payment of the tax. It is practically very innocent, those who have their concerns here they should pay this. That is why in this amendment I have mentioned that the "assets situated or located in India of the company or the corporation incorporated outside India shall for the purposes of the Act and this section be taken as situated or located in India, namely, within the territories." Some may argue that as a result of such restrictions foreign capital which is working in India may fly away from it and thereby produce some disastrous results. But, without going to other controversies, I may assure those persons that there is no such possibility. This bogey of going away of foreign capital has been raised only recently when the workers in West Bengal under the leadership of the different Trade Unions are demanding bonus, the Chief Minister of West Bengal has come out with this bogey that the foreign capital will go away from India. I think, Sir, that firstly it is a kind of bogey which has no foundation in reality. Secondly, it will not be irrelevant to mention certain other factors which would assure those friends of mine who are apprehensive about this. Today, in the Middle East, In Africa and in South-East Asia, a conflict is going on between British and American Imperialism in order to dominate and recapture them as a market, as a source of raw materials, or a field of investment. I shall ask the hon. the Finance Minister to think as a person who wants to tackle with reality; it is his duty to take note of this fact. There is a conflict going on. They are not going to leave the field clear for being dominated by their rival. Taking all this into consideration some measure can be taken to see that these foreign concerns who work here do not evade the payment of this duty or taxes. Not only that. It should be seen to that they are made to contribute to the development of the economy of our country.

Sir, I wish to mention about another aspect—these managing agencies. You know, that about these managing agencies many comments, many criticisms have been ventilated in the Press, on the platform and in the other House and in this House also. There are many foreign managing agencies who have controlling interests in various concerns like jute, engineering, shipping, etc. I am not going to detail out a list of them. I made one point during my speech on the first reading. It must be the duty of the Finance Minister and the Government to see that they cannot avoid the payment of this duty. As I have said before, there is no clear statistical information as regards the amount of their assets, that is a very big loophole which should be carefully examined. These managing agents may argue that they have no properties in some of these concerns. Actually what are their assets? We have no precise idea, but that is the reason why we should try to make the provision fool-proof; there should be left no loophole for avoiding payment of this duty. That is why I have tabled this amendment worded as it is. And, I think the hon. the Finance Minister should find no objection to accept my amendment when he is going to assure

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us that it is not his intention to give them any loophole for the avoidance of this duty.

SHRI M. C. SHAH: Ordinarily, the situation or location of a company or corporation is considered from the point of view of where the company is registered. If you just accept this amendment the administrative difficulty will be very great. As a matter of fact, we are providing in section 84(1) that the estate duty will be payable on certain shares if their value exceeds Rs. 5,000, at the rate of 7½ per cent. That is to be taken from the company itself. If this amendment is accepted, it will become very difficult to collect the estate duty from the foreigner. Supposing a shareholder belongs to Canada, and he has a share here, it will be difficult to collect the duty from him. In clause 84(1), we have provided for the collection of the duty from the company itself and if we accept this provision it will become administratively very difficult to work it out. I am sorry I cannot therefore accept the amendment.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 15, after line 3 the following be added, namely:—

'Provided that the assets situated or located in India of the company or the corporation incorporated outside India shall for the purposes of the Act and this section be taken as situated or located in India, namely, within the territories.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

PETITION *RE* THE ESTATE DUTY BILL, 1953

SECRETARY: Sir, I have to report to the Council that I have received a petition in respect of the Estate Duty Bill, 1953, as passed by the House of the People.

MR. DEPUTY CHAIRMAN: It will be referred to the Petitions Committee.

The Council then adjourned till four of the clock.

The Council re-assembled at four of the clock, MR. DEPUTY CHAIRMAN in the Chair.

MR. DEPUTY CHAIRMAN: Clauses 22 and 22A. Syed Nausher Ali is absent. On clauses 23 to 26 there are no amendments. On clause 27 there is one amendment by Syed Nausher Ali. But he is absent.

Clauses 22 to 30 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now we take up clause 31. There are eight amendments.

SHRI H. N. KUNZRU: Sir, I beg to move:

"That at page 19, for clause 31, the following clause be substituted, namely:—

'31. *Exemption in case of quick succession to property.*—Where the Board is satisfied that the estate duty has become payable on any property passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, no estate duty shall be payable on the second death in respect of the property so passed.

Explanation.—For the purposes of this section, deaths occurring